

54
No. 10351

United States
Circuit Court of Appeals
For the Ninth Circuit.

✓
2343

—
NAT ROGAN, Collector of Internal Revenue for
the Sixth District of California,

Appellant,

vs.

JAMES A. KAMMERDINER, individually and as
Surviving Joint Tenant of Myrtle B. Kammer-
diner, deceased,

Appellee.

—
Transcript of Record
—

Upon Appeal from the District Court of the United States
for the Southern District of California
Central Division

FILED
MAR 2 1943

No. 10351

United States
Circuit Court of Appeals
For the Ninth Circuit.

NAT ROGAN, Collector of Internal Revenue for
the Sixth District of California,

Appellant,


vs.

JAMES A. KAMMERDINER, individually and as
Surviving Joint Tenant of Myrtle B. Kammer-
diner, deceased,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Southern District of California,
Central Division



Digitized by the Internet Archive
in 2010 with funding from
Public.Resource.Org and Law.Gov

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

Page

Answer 46

Appeal:

Certificate of Clerk to Transcript of Record on 90

Designation of Contents of Record on Appeal, Defendant's (DC)..... 88

Designation of Additional Parts of Record Material for Consideration on Appeal, Appellee's, (CCA) 492

Designation of Parts of Record Deemed Necessary for Consideration on Appeal, Appellant's (CCA) 484

Notice of 84

Orders Extending Time to Docket Record on 85, 86

Statement of Points on Which Appellant Intends to Rely (CCA)..... 478

Stipulation re Record on..... 86

Certificate of Clerk to Transcript of Record on Appeal 90

	Index	Page
Complaint		2
Exhibits:		
A—Letter of Deficiency, Jan. 18, 1937		12
B—Letter Showing Reduced Deficiency, Nov. 10, 1937.....		17
C—Letter of Tentative Redetermination of Deficiency, Jan. 26, 1938..		20
D—Letter, Mar. 18, 1938, Final Redetermination of Deficiency		23
E—Acknowledgment of Credit, Apr. 26, 1939		24
F—Certificate of Overassessment, May 31, 1939		25
G—Amended Claim for Refund.....		27
H—Rejection of Amended Claim for Refund, Feb. 2, 1940.....		45
Conclusions of Law.....		65
Designation of Additional Parts of Record Material for Consideration on Appeal, Appellee's (CCA)		492
Designation of Contents of Record on Appeal, Defendant's (DC)		88
Designation of Parts of Record Deemed Necessary for Consideration on Appeal, Appellant's, (CCA)		484

Index	Page
Findings of Fact and Conclusions of Law.....	55
Judgment	67
Motion, Defendant's, for New Trial and to Amend and Add Findings and Conclusions	69
Names and Addresses of Attorneys.....	1
Notice of Appeal.....	84
Notice of Hearing.....	83
Order, Minute, February 28, 1940, Trial.....	54
Order Denying Motion for New Trial and to Amend and Add Findings and Conclusions..	84
Orders Extending Time to Docket Cause on Appeal	85, 86
Statement of Points on Which Appellant In- tends to Rely (CCA).....	478
Stipulation re Record on Appeal.....	86
Transcript of Proceedings.....	91
Exhibits for Government:	
1—Bank Book, Guaranty Trust & Savings Bank, Aug. 3, 1921 to Oct. 9, 1935	117
2—Bank Book, First National Bank, Nov. 13, 1924 to Dec. 2, 1925.....	122
3—Bank Book, Citizens National Trust & Savings Bank, Nov. 21, 1925 to July 26, 1930.....	123

Index	Page
Exhibits for Government—(Continued):	
4—Savings Account, Bank of Italy, Aug. 16, 1929 to Sept. 21, 1931...	131
5—Bank Book, Merchants National Trust & Savings Bank, Jan. 7, 1927 to June 22, 1928.....	133
6—Bank Book, Security Trust & Sav- ings Bank, Jan. 23, 1926 to Aug. 19, 1926	134
7—Bank Book, Citizens Trust & Sav- ings Bank, Apr. 24, 1928 to July 9, 1931	135
8—Bank Book, Security-First Na- tional Bank of Los Angeles, July 7, 1931 to Mar. 23, 1933.....	138
9—Bank Book, Bank of America, Fullerton, May 15, 1925 to Nov. 17, 1925	141
10—Bank Book, Western and Beverly Branch of the Security-First Na- tional Bank of Los Angeles, Sav- ings Account 65619	142
11—Bank Book, Security-First Na- tional Bank of Los Angeles, No. 288844, Mar. 17, 1933 to Aug. 14, 1933	144

Index	Page
Exhibits for Government—(Continued):	
12—Certified Copy of Estate Tax Return	149
13—List of Patents.....	207
14a—Certificate of Partnership Name..	214
14b—Petition and Answer—Board of Tax Appeals and J. Kammerdiner, Docket No. 41643.....	219
15—Petition and Answer—Board of Tax Appeals and J. Kammerdiner, Docket No. 46555.....	236
16—Official Report of Proceedings Before the U. S. Board of Tax Appeals, Dockets Nos. 41643 and 46555	439
Witnesses for Petitioner:	
Kammerdiner, J. A.	
—direct	441
—cross	456
—redirect	463
—recross	465
Kammerdiner, Mrs. Myrtle B.	
—direct	466
—cross	474
—redirect	476
17—Protest Against Decision of Treasury Department, Years 1925 and 1926, of Mr. J. Kammerdiner....	295

Index	Page
Exhibits for Government—(Continued):	
18—Protest Against Decision of Treasury Department, Years 1925 and 1926, of Partnership Return.....	302
19—Partnership Return of Mr. and Mrs. Kammerdiner for the Year 1925	308
20—Partnership Return for Year 1926	313
21—Partnership Return for Year 1928	317
22—Individual Income Tax Return of Mrs. J. Kammerdiner for Year 1925	325
23—Individual Income Tax Return of Mr. J. Kammerdiner for Year 1925	328
24—Income Tax Return of Mrs. J. Kammerdiner for Year 1926.....	332
25—Income Tax Return of Mr. J. Kammerdiner for Year 1926.....	336
26—Income Tax Return of Mr. J. Kammerdiner for Year 1928.....	340
27—Income Tax Return of Mrs. J. Kammerdiner for Year 1928.....	342
28—Income Tax Return of Mr. J. Kammerdiner for Year 1929.....	344

Index

Page

Exhibits for Government—(Continued):

29—Income Tax Return of Mrs. Jas. Kammerdiner for Year 1929.....	346
30—Income Tax Return of Myrtle B. Kammerdiner for Year 1930.....	348
31—Income Tax Return of Jas. A. Kammerdiner for Year 1930.....	352
32—Tax Return of Jas. A. Kammer- diner for Year 1934.....	356
33—Tax Return of Mrs. Myrtle Kam- merdiner for Year 1934.....	358
34—Tax Return of James A. Kam- merdiner for Year 1935.....	360
35—Tax Return of Myrtle Kammer- diner for Year 1935.....	362
36—Tax Return of Estate of Myrtle Kammerdiner (Deceased) for Year 1935	364

Exhibits for Plaintiff:

1—Letter of Deficiency, Jan. 18, 1937	92
Set out as Exhibit A to Complaint	12
2—Letter Showing Reduced Defici- ency, Nov. 10, 1937.....	92
Set out as Exhibit B to Complaint	17

Index	Page
Exhibits for Plaintiff—(Continued):	
3—Letter of Tentative Redetermination, Jan. 26, 1938.....	92
Set out as Exhibit C to Complaint	20
4—Letter of Final Determination, Mar. 18, 1938.....	93
Set out as Exhibit D to Complaint	23
5—Acknowledgment of Credit, Apr. 26, 1939	93
Set out as Exhibit E to Complaint	24
6—Certificate of Overassessment, May 31, 1939	93
Set out as Exhibit F to Complaint	25
7—Amended Claim for Refund.....	94
Set out as Exhibit G to Complaint	27
8—Rejection of Amended Claim for Refund, Feb. 2, 1940.....	95
Set out as Exhibit H to Complaint	45
9—Agreement of Jan. 3, 1928, James A. Kammerdiner and Myrtle B. Kammerdiner	105
10—Letter of Internal Revenue Agent, Protest of James A. Kammerdiner and Letter showing Action of the Internal Revenue Office.....	269

Index

Page

Exhibits for Plaintiff—(Continued):

- 11—Letter from Treasury Dept., Internal Revenue Service, June 12, 1928, addressed to Mrs. J. Kammerdiner 377
- 12—Letter from Treasury Dept., Internal Revenue Service, June 12, 1928, addressed to Mr. J. Kammerdiner 383
- 13—Letter from Internal Revenue Service, addressed to Mr. J. Kammerdiner, dated Aug. 14, 1928.... 395
- 14—Letter dated July 12, 1929, from Internal Revenue Service, addressed to Mrs. J. Kammerdiner.. 400
- 15—Letter dated July 12, 1929, from Internal Revenue Service, addressed to J. Kammerdiner..... 404
- 16—Letter of Deficiency, Oct. 14, 1929, addressed to Mr. J. Kammerdiner. 410
- 17—Treasury Department, Internal Revenue Service Letter addressed to Mrs. J. Kammerdiner, May 15, 1930 414
- 18—Letter of Internal Revenue Service, May 15, 1930, addressed to J. Kammerdiner 422

Index

Page

Witnesses for Government:

O'Hanlon, Dan

—direct 294

—cross 367

Kammerdiner, James

—direct 433

Witness for Plaintiff:

Kammerdiner, James A.

—direct 96

—cross 110

—redirect 264

NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

LEO V. SILVERSTEIN, Esq.,

United States Attorney,

Federal Building,

Los Angeles, California.

E. H. MITCHELL, Esq.,

Assistant U. S. Attorney,

Federal Building,

Los Angeles, California.

For Appellee:

CLAUDE I. PARKER, Esq.,

RALPH W. SMITH, Esq.,

808 Bank of America Bldg.,

Los Angeles, California. [1*]

* Page numbering appearing at foot of page of original certified Transcript of Record.

In the District Court of the United States in and
for the Southern District of California, Central
Division.

No. 995-B—Civil

JAMES A. KAMMERDINER, Individually and as
Surviving Joint Tenant of

MYRTLE B. KAMMERDINER, Deceased,
Plaintiff

v.

NAT ROGAN, Collector of Internal Revenue of
the Sixth District of California,
Defendant

COMPLAINT FOR REFUND OF FEDERAL
ESTATE TAXES ILLEGALLY COL-
LECTED.

Plaintiff herein for cause of action against the
Defendant alleges:

I.

That on or about the fourth day of April, 1935,
Myrtle B. Kammerdiner died in the City of Los
Angeles, State of California, but left no estate
and made no transfers of property other than Joint
Tenancy property set forth in Form 706 hereafter
referred to. That she was at the time of her death
a resident of the City of Los Angeles, State of
California, Sixth District of California. That at
the time of her death she owned certain real and
personal property in joint tenancy with the Plain-

tiff herein. That upon and by virtue of her death, said real and personal property so held by her in joint tenancy with Plaintiff herein vested solely in Plaintiff. That Plaintiff is the surviving husband of said Myrtle B. Kammerdiner.

II.

That on or about the 1st day of July, 1935, the defendant, Nat Rogan, was duly appointed United States Collector of Internal Revenue for the Sixth District of California, and continuously thereafter was and still is the duly appointed, qualified, and acting Collector of Internal Revenue for the said district and was, during [2] all of said times and still is, a resident and inhabitant of the City of Los Angeles, State of California, and of the Sixth District of California.

III.

That Plaintiff, a resident of said district as such surviving joint tenant of Myrtle B. Kammerdiner, did duly file on or about the 16th day of March, 1936 with the Defendant as Collector of Internal Revenue for the Sixth District of California, a federal estate tax return, Form 706, in accordance with the provisions of law in that regard and the regulation of the Secretary of Treasury of the United States in pursuance thereof, showing therein a total net federal estate tax of \$4,332.27; that at the time of filing said return, Plaintiff, as such surviving joint tenant as aforesaid, paid the Defendant as Collector of Internal Revenue of the

United States for the Sixth District of California, on account of said federal estate tax so returned, the sum of \$3,943.91, and on or about the 17th day of August, 1936, paid to Defendant the balance of said federal estate tax as so returned with interest thereon in full to the said date of payment.

IV.

That in due course the federal estate tax return, Form 706, was audited by the office of the Commissioner of Internal Revenue, resulting, on the 18th day of January, 1937, in a tentative determination of deficiency tax amounting to \$56,800.80. That Plaintiff, as surviving joint tenant as aforesaid, was informed of such tentative determination by a deficiency letter dated January 18, 1937, a true copy of which is attached hereto and by specific reference made a part hereof and marked Exhibit A. [3]

V.

That thereafter and as a result of a protest duly filed with the Commissioner of Internal Revenue, and following consideration thereof by his office, the Commissioner of Internal Revenue did, on November 10, 1937, notify Plaintiff of his contemplated action in regard to said protest, said contemplated action showing a deficiency tax of \$30,328.11, instead of \$56,800.80, as shown in said Commissioner's letter of January 18, 1937. A true copy of said letter of November 10, 1937, showing the reduced deficiency tax, is attached hereto and by

specific reference made a part hereof and marked Exhibit B.

VI.

That after the submission of further evidence by Plaintiff, the Commissioner of Internal Revenue did on January 26, 1938 tentatively redetermine the deficiency in said federal estate tax in the amount of \$23,816.11 and further tentatively determined: "If the evidence is furnished showing that the estate is entitled to the credit of eighty per cent against the tax as determined under the Revenue Act of 1926, the net deficiency will be \$19,706.44. That Plaintiff, as such surviving joint tenant, as aforesaid, was informed of such tentative redetermination by a deficiency letter dated January 26, 1938, a true copy of which is attached hereto and by specific reference made a part hereof and marked Exhibit C.

VII.

That on March 18, 1938, the Commissioner of Internal Revenue finally redetermined the deficiency in said federal estate tax in accordance with the deficiency indicated in his said letter of January 26, 1938 in the amount of \$23,816.11. That Plaintiff, as such surviving joint tenant, as aforesaid, was informed of such final redetermination of said deficiency in the said federal estate tax by a deficiency letter dated March 18, 1938, a true copy of which is attached hereto and by specific reference made a part hereof and marked Exhibit D. [4]

VIII.

That on May 10, 1938, Plaintiff, as such surviving joint tenant, as aforesaid, paid the defendant, as Collector of Internal Revenue of the United States for the Sixth District of California, \$19,706.44, the total amount of the deficiency in federal estate tax in said matter as finally determined by the Commissioner of Internal Revenue on March 18, 1938, in excess of the proper credit for California inheritance tax, \$4,109.67, together with interest thereon at six per cent **per annum from** April 4, 1936 to the said date of payment \$2,384.21, or a total payment of deficiency estate tax and interest of \$22,090.65.

IX.

That on April 26, 1939, the said Commissioner of Internal Revenue acknowledged in writing to Plaintiff that "the estate has submitted evidence of payment of State estate, inheritance, legacy, or succession taxes as required by Article 9, Regulations 80, entitled it to a credit of \$4,109.67, which is herein allowed." A true copy of said written acknowledgment of April 26, 1939 is attached hereto and by specific reference made a part hereof and marked Exhibit E.

X.

That on May 31, 1939, said Commissioner of Internal Revenue, after a final audit of the said estate tax return, issued a certificate of overassessment covering said \$4,109.67, "Credit for State estate, inheritance, legacy or succession taxes," and in-

terest thereon, leaving as the final redetermination of deficiency in said federal estate tax, \$19,706.44, which said amount was, as stated in paragraph VIII hereof, paid in full by Plaintiff on March 18, 1938, with all interest payable thereon to the said date of payment, [5] total payment redetermined deficiency and interest, \$22,090.65. A true copy of said certificate of overassessment of May 31, 1939 is attached hereto and by specific reference made a part hereof and marked Exhibit F.

XI.

That thereafter, to-wit, on or about the 7th day of July, 1939, the said Plaintiff duly and regularly filed with the said Defendant, as Collector of Internal Revenue of the United States for the Sixth District of California, for transmittal to the Commissioner of Internal Revenue of the United States, a claim for refund of federal estate tax erroneously and illegally assessed and collected in said matter in the sum of \$22,090.65, “(or such greater amount as is legally refundable)”.

XII.

That on or about the seventeenth day of October, 1939, the said Plaintiff duly and regularly filed with the said Defendant, as Collector of Internal Revenue of the United States for the Sixth District of California, for transmittal to the said Commissioner of Internal Revenue of the United States an amended claim for refund of federal estate tax erroneously and illegally assessed and collected in

said matter in the said sum of \$22,090.65, “(or such greater amount as is legally refundable)”, and interest. Said amended claim was filed in substitution of said former claim filed as aforesaid on the 7th day of July, 1939. A true copy of said amended claim for refund is attached hereto and by specific reference made a part hereof and marked Exhibit G. That thereafter, said Commissioner of Internal Revenue, having audited said amended claim for refund, did find and determine that there had not been an overassessment or overpayment of federal estate tax against or by Plaintiff, individually or as such surviving joint tenant of the said [6] Myrtle B. Kannerdiner, deceased, or the estate of said Myrtle B. Kannerdiner, deceased, in excess of the amount for which certificate of overassessment was, as stated in Paragraph X hereof, issued on May 31, 1939, and did therefore reject said claim for refund in its entirety by written rejection dated February 2, 1940. A true copy of said rejection in the form of a letter to Plaintiff dated February 2, 1940, signed by D. S. Bliss, Deputy Commissioner of Internal Revenue is attached hereto and by this specific reference made a part hereof and marked Exhibit H.

That the Commissioner of Internal Revenue in said letter of February 2, 1940, a copy of which is attached hereto as “Exhibit H”, in referring to the interest of decedent in the rotary jar business included in the federal estate tax return herein, Form 706, as Item One of “Other Miscellaneous Prop-

erty” states: “The records of the Bureau show that the value of decedent’s interest was determined at \$175,000.00 for the purpose of final adjustment, which adjustment was agreed to by the estate.” The Plaintiff denies that a final adjustment was at any time made or agreed to in relation to the said federal estate tax or the determined tax deficiency. And in this connection, Plaintiff alleges that on the third day of January, 1928, decedent and her husband, Plaintiff herein, entered into an agreement in relation to the manufacture, renting and selling of rotary jars, that the subject of said agreement was community property of the parties acquired prior to July 29, 1927, and is referred to in Item One of “Other Miscellaneous Property” in the federal estate tax return, Form 706, herein. That a copy of said agreement is attached, as Exhibit A to and a part of the said Exhibit G appended hereto as aforesaid. That by the terms of said agreement, the said business and property therein referred to was either community property acquired [7] before July 29, 1927 or joint tenancy property and, therefore, no part of it was or is a proper part of decedent’s gross estate for estate tax purposes for the reason that the decedent was not the original owner of any part thereof and any interest if any therein of the decedent was not received for a valuable or adequate consideration. That said Commissioner of Internal Revenue failed to give due consideration to the effect of said agreement in determining the federal estate tax payable herein.

XIII.

That the Commissioner of Internal Revenue of the United States erroneously and illegally exacted from Plaintiff federal estate tax in the following particulars, to-wit:

(a) That the Commissioner of Internal Revenue erred in including in the gross estate of the said Myrtle B. Kammerdiner any interest or value in the rotary jar business, included in the federal estate tax return herein, Form 706, as Item One of "Other Miscellaneous Property."

(b) That the Commissioner of Internal Revenue erred in including as an asset of said rotary jar business the patents issued to and owned by Plaintiff and securing to him the sole right to manufacture said rotary jars.

(c) That the Commissioner of Internal Revenue erred in finding that one-half of said rotary jar business, including rotary jars on hand, good will and patents issued to and owned by Plaintiff was of the value of \$175,000.00 or of any value in excess of \$100,000.00.

(d) That the Commissioner of Internal Revenue erred in finding that the said rotary jar business was not owned by decedent and Plaintiff either as the community property of said spouses acquired prior to July 29, 1927 or in joint tenancy [8] created out of such community property or out of such community property and property of decedent which had been given to her by Plaintiff, and therefore not a part of her gross estate for federal estate tax purposes.

That by reason of the foregoing said taxpayer overpaid his federal estate tax in the amount of \$22,090.65.

Wherefore, Plaintiff prays judgment in his favor against Defendant in the sum of \$22,090.65, with interest thereon at the rate of six per cent (6%) per annum from May 10, 1938 to the date of payment, and for his costs herein expended, and for such other and further relief as the Court may deem meet and proper in the premises.

Dated this 10th day of June, 1940.

CLAUDE I. PARKER and
RALPH W. SMITH

Attorneys for Plaintiff

Of Counsel:

W. H. H. GENTRY

(Duly verified.) [9]

EXHIBIT A

TREASURY DEPARTMENT

Washington

Office of January 18, 1937.

Commissioner of Internal Revenue,

Address Reply to

Commissioner of Internal Revenue and Refer to
MT-ET-8199-6th California.

Estate of Myrtle B. Kammerdiner

Date of Death—April 4, 1935.

James A. Kammerdiner, Executor,

237 South Highland,

Los Angeles, California.

Sir:

A deficiency in the Federal estate tax liability of the above-named estate is hereby proposed as the result of an examination of the return, Form 706, the revenue agent's report, and other data on file.

If you acquiesce in the proposed deficiency, you are requested to execute and forward the enclosed Form 890, which is a waiver of the statutory restrictions upon the immediate assessment and collection of the deficiency. The submission of the waiver will expedite the closing of the case and will also lessen the accumulation of interest, since the interest period will then terminate thirty days after filing of the waiver or on the date of assessment, whichever is earlier. Should you desire to consent to the assessment and collection of only a part of the deficiency, the waiver may be executed

for such partial amount. The execution of the waiver does not prejudice your right to file a claim for refund of all or any portion of the tax.

The issuance of this notice does not permit a petition to the United States Board of Tax Appeals. However, a protest against the proposed deficiency may be filed within 30 days from the date of this letter. If a hearing is desired in this office, or if no [11] hearing is contemplated, the protest should be filed with this office. If a hearing is desired in the local division, the protest should be filed with the Internal Revenue Agent in Charge, Los Angeles, California. A protest must be filed in duplicate, and (a) present fully the grounds upon which made, supported by the evidence relied upon, and (b) state whether a hearing is requested. Any statements of fact included therein must be under oath.

If the case cannot be closed upon the basis of a waiver, or if a protest is not filed within the specified time, a formal notice of deficiency will be issued under section 308(a) of the Revenue Act of 1926, as amended, and you may then petition the United States Board of Tax Appeals for redetermination of the tax liability.

A copy of this letter is being forwarded to the Internal Revenue Agent in Charge, 939 South Broadway, Los Angeles, California.

Examination of the return discloses the following:

	Returned	Tentatively Determined
Gross estate	\$142,904.64	\$512,716.86
Deductions		
(1926 Act)	103,486.72	102,016.51
Net estate		
(1926 Act)	\$ 39,417.92	\$410,700.35
Gross estate	\$142,904.64	\$512,716.86
Deductions		
(1932 Act)	53,486.72	52,016.51
Net estate		
(1932 Act)	\$ 89,417.92	\$460,700.35
1. Gross tax		
(1926 Act)	\$ 394.18	\$ 13,035.02
2. Credit for		
gift tax	0.00	0.00
3. Gross tax less gift		
tax credit	394.18	13,035.02
4. Credit for estate or		
inheritance tax ..	315.84	0.00
5. Net tax (1926 Act) \$	78.84*	\$ 13,035.02
		[12]
6. Total gross taxes		
(1926 and 1932		
Acts)	\$ 4,647.61	\$ 61,133.07
7. Gross tax 1926 Act	394.18	13,035.02
8. Gross add'l. tax..\$	4,253.43	\$ 48,098.05
9. Credit for gift tax	0.00	0.00
10. Net add'l. tax\$	4,253.43	\$ 48,098.05
11. Total net tax.....\$	4,332.27	\$ 61,133.07
*Should be \$78.34		
Amount assessed as		
deficiency pursu-		
ant to waiver	0.00	4,332.27
Deficiency		\$56,800.80

The deficiency bears interest at the rate of 6 per cent per annum from one year after the decedent's death to the date of assessment, or to the thirtieth day after the filing of a waiver of the restrictions on the assessment, whichever is the earlier.

The deficiency results from the following adjustments:

GROSS ESTATE

Jointly Owned Property	Returned	Tentatively Determined
Item 14	\$ 5,380.00	\$ 10,760.00
Item 15	2,500.00	5,000.00
Item 16	900.00	1,800.00
Item 17	3,125.00	5,000.00
Item 18	5,000.00	5,625.00
Item 25	5,151.00	5,188.88
Item 27	10,750.00	10,756.25
Interest on Item 27.....	0.00	66.88
Interest on Item 28.....	0.00	137.77
Interest on Item 29.....	0.00	230.44
[13]		
Item 31	3,250.00	3,300.00
Item 41	855.00	1,710.00

Items 14, 15 and 16 under this schedule are included in full values as it does not appear upon investigation that contributions toward the purchase prices of these items were made by any other person than the decedent.

Other Miscellaneous Property

Item 1	\$ 0.00	\$357,148.00
--------------	---------	--------------

Decedent's interest in the business of leasing rotary jars for oil wells, patents, royalties, partnership, etc., is valued as follows:

Average net earnings for the past 10 years is, about \$73,000.00 per year, or for the next 17 years will, at the same rate, amount to \$1,241,000.00. The Factor for 17 years at the rate of 6% is .575581 and $\$1,241.00 \times .575581 = \$714,296.02$, and $\frac{1}{2}$ of this amount is accepted as the value of the item considered under this schedule.

DEDUCTIONS

	Tentatively Determined	Returned
Miscellaneous administration		
expenses	\$ 1,228.78	\$ 2,698.99
To balance	\$371,282.43	

Under miscellaneous administration expenses one-half of the taxes due at the date of death are allowed since payment was made from the joint bank account of the decedent and her husband.

Credit

No allowance is made for credit on account of State estate, inheritance, legacy or succession taxes paid, for the reason that [14] the evidence required under Article 9 of Regulations 80 has not been submitted. Please advise when the credit evidence may be expected.

If the full eighty per cent credit is allowed, the net deficiency tax will be \$46,372.78. Execution of the enclosed waiver as to that amount will enable the Bureau to assess the full amount of the probable net tax and expedite the closing of the case.

Respectfully,

(Sg.) D. S. BLISS

Deputy Commissioner.

Enclosure Waiver. [15]

EXHIBIT B

TREASURY DEPARTMENT

Washington

Office of
Commissioner of
Internal Revenue

Nov. 10, 1937

Address Reply to
Commissioner of Internal Revenue
and Refer To
MT-ET-C1-8199-6th California
Estate of Myrtle B. Krammerdiner
Date of death—April 4, 1935

James A. Kammerdiner, Executor,
237 South Highland,
Los Angeles, California.

Sir:

Reference is made to Bureau letter of January 18, 1937, which tentatively determined a deficiency in estate tax in the above-named estate in the amount of \$56,800.80. A protest against the tentative determination was filed in this office on March 17, 1937, and at a hearing the estate was represented by L. A. Luce and Ralph W. Smith acting under a power of attorney.

The protest relates to the following items and adjustments are proposed as indicated:

GROSS ESTATE

Jointly Owned Property	Returned	Tentatively Determined	Proposed Determination
Item 11	\$ 3,375.00	\$ 3,375.00	\$ 0.00
Item 12	1,125.00	1,125.00	0.00

Gross Estate—(Cont'd.)			
Jointly Owned Property	Returned	Tentatively Determined	Proposed Determination
Item 13	2,500.00	2,500.00	0.00
Item 14	5,380.00	10,760.00	10,760.00
Item 15	2,500.00	5,000.00	5,000.00
Item 16	900.00	1,800.00	1,800.00
			[16]
Item 17	3,125.00	5,000.00	5,000.00
Item 18	5,000.00	5,625.00	0.00

The protest as to items 11, 12, 13 and 18 is sustained and the values as tentatively determined are herein eliminated from the gross estate. The evidence submitted indicated that the property represented by these items was purchased with community funds acquired prior to July 1927, in which the wife had a mere expectancy and she made no contribution to the purchase of the jointly owned property.

As to items 14, 15 and 16 the protest is rejected. As to these items it is contended that although the property was inherited by the decedent from her parents, the decedent and her husband contributed to the maintenance and upkeep of the property from community funds for many years and therefore resulted indirectly in a contribution of the husband to the acquisition of the property. Such a contention is not accepted by the Bureau.

The protest as to item 17 was to the effect that only one-half of the value should have been included in the gross estate. In the audit only one-half of the value as determined by the Bureau was included and the protest as to this item is rejected.

Gross Estate—(Cont'd.)

Other Miscellaneous Property	Returned	Tentatively Determined	Proposed Determination
Item 1	\$ 0.00	\$357,148.00	\$215,700.00

The Bureau holds that the decedent and her husband were equal partners in the business of leasing rotary jars for oil wells. This question was before the Board of Tax Appeals in the case of *Kammerdiner v. Commissioner*, 25 B.T.A. 495 and it was held that an equal partnership existed. Decedent's interest in the partnership [17] is herein valued at \$215,700.00.

The following summary is submitted:

Gross estate		\$358,643.86
Deductions, 1926 Act		102,016.51
<hr/>		
Net estate, 1926 Act.....		\$256,627.35
Net estate, 1934 Act.....		\$306,627.35
Gross tax, 1926 Act.....	\$ 6,765.09	
Credit for State estate, inheritance, legacy, or succession taxes	0.00	
<hr/>		
Net tax, 1926 Act.....		\$ 6,765.09
Gross taxes, 1926 and 1934 Acts..	\$ 34,660.38	
Gross tax, 1926 Act.....	6,765.09	
<hr/>		
Additional tax		27,895.29
<hr/>		
Total net tax.....		\$ 34,660.38
Tax returned		4,332.27
<hr/>		
Deficiency		\$ 30,328.11

If the evidence is furnished showing that the estate is entitled to the credit of 80 per cent against the tax as determined under the Revenue Act of

1926, the net deficiency will be \$24,916.04. Execution of the enclosed waiver as to that amount will enable the Bureau to assess the net deficiency and expedite the closing of this case and will also stop the running of interest.

This is not a final determination of the tax liability in this case and no appeal herefrom lies to the Board of Tax Appeals. A reply to this letter within twenty days from this date will be appreciated.

Respectfully,
D. S. BLISS,
Deputy Commissioner.

Enclosure:
Waiver. [18]

EXHIBIT C

Jan. 26, 1938.

MT-ET-C1-8199-6th California
Estate of Myrtle B. Kammerdiner
Date of death—April 4, 1935

James A. Kammerdiner, Executor,
237 South Highland,
Los Angeles, California.

Sir:

Reference is made to Bureau letters of January 18 and November 10, 1937, which tentatively determined a deficiency in estate tax in the above-named estate. Since the mailing of Bureau letter of November 10, 1937, the estate has submitted further

evidence relative to the value of decedent's interest in the business of leasing rotary jars for oil wells and the evidence submitted shows that the estate has endeavored to sell the entire business for \$250,000.00, but so far has been unable to do so. A value of \$175,000.00 for decedent's interest has been agreed upon in this estate tax case. This business was returned as item 1 under other miscellaneous property in the estate tax return and the following adjustment is proposed:

GROSS ESTATE

Other Miscellaneous Property	Returned	Proposed Determination	Proposed Re-Determination
Item 1	\$ 0.00	\$215,700.00	\$175,000.00
The following summary is submitted:			
Gross estate			\$317,943.86
Deductions (1926 Act)			102,016.51
<hr/>			
Net estate (1926 Act).....			\$215,927.35
Net estate (1932 Act).....			\$265,927.35
Gross tax (1926 Act).....			\$ 5,137.09
<hr/>			
[19]			
Credit for State estate, inheritance, legacy or succession taxes			0.00
<hr/>			
Net tax (1926 Act).....			\$ 5,137.09
Total gross taxes (1926 and 1932 Acts).....			\$ 28,148.38
Gross tax (1926 Act).....			5,137.09
<hr/>			
Net additional tax.....			\$ 23,011.29
Net tax (1926 Act).....			5,137.09
<hr/>			
Total net tax.....			\$ 28,148.38
Amount assessed on return.....			4,332.27
<hr/>			
Deficiency			\$ 23,816.11

If the evidence is furnished showing that the estate is entitled to the credit of 80 per cent against the tax as determined under the Revenue Act of 1926, the net deficiency will be \$19,706.44. Execution of the enclosed waiver will enable the Bureau to assess the net deficiency and expedite the closing of this case and will also stop the running of interest.

This is not a final determination of the tax liability in this case and no appeal herefrom lies to the Board of Tax Appeals. Your reply to this letter within twenty days from the date hereof will be appreciated.

Respectfully,
(Signed) D. S. BLISS,
Deputy Commissioner.

Encl.—Waiver.

JBM-ER [20]

EXHIBIT D

TREASURY DEPARTMENT

Washington

Office of Commissioner of Internal Revenue

Mar. 18, 1938.

Address Reply to
Commissioner of Internal Revenue
And Refer to

MT-ET-8199-6th California
Estate of Myrtle B. Kammerdiner
Date of Death—April 4, 1935

James A. Kammerdiner, Executor,
237 South Highland,
Los Angeles, California.

Sir:

Reference is made to Bureau letter addressed to you under date of January 26, 1938, indicating a deficiency in estate tax due from the above-named estate amounting to \$23,816.11. The determination of such deficiency is final, subject to allowance of credit for State estate, inheritance, legacy or succession taxes.

Of the deficiency, \$19,706.44 has been assessed in accordance with a signed waiver, Form 890. As the balance of the deficiency in tax is due to the disallowance of credit for such State taxes, the assessment thereof will be deferred pending advice relative to the submission of the evidence required by Article 9, Regulations 80.

Payment of the portion of the deficiency and in-

terest assessed should be made to the collector upon receipt of his notice and demand.

Respectfully,

D. S. BLISS,

Deputy Commissioner. [21]

EXHIBIT E

MT-ET-8199-6th California.

Estate of Myrtle B. Kammerdiner

Date of death—April 4, 1935.

April 26, 1939

James A. Kammerdiner, Executor,

237 South Highland

Los Angeles, California.

Sir:

Reference is made to Bureau letter addressed to you under date of March 18, 1939, indicating a deficiency in estate tax due from the above-named estate amounting to \$23,816.11, which has been assessed.

Since the mailing of the above-mentioned letter the estate has submitted evidence of payment of State estate, inheritance, legacy or succession taxes as required by Article 9, Regulations 80, entitling it to a credit of \$4,109.67, which is herein allowed.

A certificate of overassessment will be issued in due course.

Respectfully,

(Signed) D. S. BLISS,

Deputy Commissioner.

MWB:HLE [22]

EXHIBIT F

TREASURY DEPARTMENT

Office of

Commissioner of Internal Revenue

Washington

May 31, 1939.

Miscellaneous Tax Unit Certificate of
Overassessment
MT-ET- Number: 8199-6th Calif.
Allowed: \$4,606.88
Schedule No. MTR:20435

James A. Kammerdiner, Executor,
u/w of Myrtle B. Kammerdiner,
237 South Highland,
Los Angeles, California.

Sir:

An audit of the estate tax return, Form 706, of the estate of Myrtle B. Kammerdiner, who died April 4, 1935, and a consideration of all the claims (if any) filed by you indicates that the tax assessed against the Estate was in excess of the amount due as per the following statement:

Assessments:

August 1936 List, page 102, line 0.....	\$ 4,332.27
August 1936, page 102, line 0—Interest.....	8.60
April 1938 5th Supple. List, page 101, line 4	19,706.44
April 1938 5th Supple. List, page 101, line 4—Interest	2,384.21
March 1939 2d Supple. List, page 100, line 0	4,109.67
March 1939 2d Supple. List, page 100, line 0—Interest	497.21

\$31,038.40

Correct tax liability.....\$28,148.38

Credit for State estate, inheritance, legacy or succession taxes 4,109.67

Net tax liability.....\$24,038.71

Interest 2,392.81

Tax and interest payable..... 26,431.52

[23]

Overassessment \$ 4,606.88

This overassessment, no part of which is subject to refund, results from the allowance of credit for the payment of State estate, inheritance, legacy or succession taxes on behalf of the above-named estate, and the adjustment of interest.

The amount of the overassessment will be abated or refunded as indicated below. (The estate will be relieved from the payment of any amount abated; and any amount found to be refundable is covered by a Treasury check transmitted herewith.)

Respectfully,

D. S. BLISS,

Deputy Commissioner.

Date claim filed....None...., 19....

Abated: \$4,606.88

Refunded: \$

Interest: \$

Instructions Executed

Signature NAT ROGAN

Collector Int. Rev.

A. J. T. [24]

EXHIBIT G

Form 843

Treasury Department

Internal Revenue Service

Revised June 1930

Amended Claim in Substitution of Former Claim

Filed on the 7th Day of July, 1939

Collector's Stamp

(Date received)

To Be Filed With the Collector Where Assessment
Was Made or Tax Paid

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse side.

[X X X] Refund of Tax Illegally Collected.

[] Refund of Amount Paid for
Stamps Unused, or Used in
Error or Excess.

[] Abatement of Tax Assessed (not applicable to estate or income taxes).

State of California,

County of Los Angeles—ss.

Name of taxpayer or purchaser of stamps: James A. Kammerdiner individually and as surviving Joint Tenant of Myrtle B. Kammerdiner, Dec'd.

Business address: 808 Bank of America Building,
(Street) Los Angeles (City), California (State).

Residence: 237 South Highland Avenue, Los Angeles, California.

The deponent, being duly sworn according to law,
deposes and says that this statement is made on

Exhibit G—(Continued)

behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed, Sixth District, California.

2. Period (if for income tax, make separate form for each taxable year) from, 19...., to, 19....

3. Character of assessment or tax: Federal Estate Tax.

4. Amount of assessment, \$22,090.65; dates of payment, May 10, 1938.

5. Date stamps were purchased from the Government

6. Amount to be refunded (or such greater amount as is legally refundable) \$22,090.65 and interest.

7. Amount to be abated (not applicable to income or estate taxes)

8. The time within which this claim may be legally filed expires, under Section..... of the Revenue Act of 19...., on, 19....

The deponent verily believes that this claim should be allowed for the following reasons:

(Attach letter-size sheets if space is not sufficient)

(Signed) JAMES A. KAMMERDINER

James A. Kammerdiner Individually and as Surviving Joint Tenant of Myrtle D. Kammerdiner, Deceased.

Exhibit G—(Continued)

Sworn to and subscribed before me this 17 day of October, 1939.

[Seal]

PEARL ANDERSON

Notary Public [25]

An informal hearing was held before the Bureau of Internal Revenue Department in Washington on the 23rd. day of July, 1939, in relation to the Original Claim for Refund herein filed, and by reason of the failure of the Original Claim for Refund to include Exhibit "A" hereinafter referred to, and further, by reason of the suggestion of the Government Conferee that certain pertinent extracts from the testimony of the case of *Kammerdiner v. Commissioner*, 25 B.T.A. 495, be included in the Claim for Refund, it was deemed advisable to prepare and file the within as an Amended and Substituted Claim for Refund and to entirely replace the Original Claim for Refund herein filed on July 7th, 1939.

Preliminary Statement

The Commissioner has determined that by reason of the decision of the Board of Tax Appeals in the case above referred to, a partnership existed between decedent and her husband, James A. Kammerdiner, and therefore one-half of all partnership assets are included in her estate, and values this interest at \$175,000.00, and failed to recognize the effect and validity of Exhibit "A" hereto attached.

Summary of Facts

Decedent, Myrtle B. Kammerdiner, wife of James A. Kammerdiner, deceased a resident of the

Exhibit G—(Continued)

City of Los Angeles, California, on the 4th day of April, 1935. That prior to January 3, 1928, the said James A. Kammerdiner and Myrtle B. Kammerdiner entered into an oral agreement relative to the income and profits from the business then owned and operated by the said James A. Kammerdiner in the manufacturing, renting and selling of rotary [26] jars, a patented device used in the field in the drilling of oil wells and in the production of oil and gas.

That heretofore protest was duly submitted to the deficiency determination of the Commissioner, and said protest was finally acted upon by the Bureau on January 26, 1938, in a letter over the signature of D. S. Bliss, Esq., Deputy Commissioner, bearing Symbols MT-ET-C1-8199-6th California.

That on the said 3rd day of January, 1928, the said parties duly entered into and executed a written agreement by which they specifically set forth all of their respective right, title and interest in and to said rotary jar business. That an exact copy of this agreement is attached hereto and marked Exhibit "A." That said Exhibit "A" was not altered or amended and remained in full force and effect until the death of the said Myrtle B. Kammerdiner.

That the Commissioner of Internal Revenue, in his report issued by the Internal Revenue Agent in Charge, Alf Oftedal, Esq., of the Los Angeles office, of date May 15, 1930, in auditing the income tax return of Mr. and Mrs. Kammerdiner for the

Exhibit G—(Continued)

year 1928, attached to said report an exact copy of the said written agreement hereto attached and marked Exhibit “A”, and in said report made the following finding, to-wit:

“As of January 3, 1928, a document was drawn up for and signed by J. Kammerdiner and his wife, Myrtle B. Kammerdiner, which they designated as a partnership agreement, but which, in fact, is a joint tenancy [27] agreement and was so considered by the attorney, Kimpton Ellis, who drew it up for the taxpayers.” (See Exhibit “A”).

“This agreement states, among other things, that all of the assets of the ‘rotary jar’ business are the community property of husband and wife. The principal asset of the business is the patent which was obtained by the husband in 1923 and under the protection of which he manufactures the ‘rotary jar’ which produces the income. This patent has never been assigned by J. Kammerdiner and remains his separate property to continue to hold or to dispose of as he may see fit.”

“Satisfactory evidence was submitted as to the joint ownership of all of the property which produced the income which was reported on Lines 4-5-7-9 and 10 of Form 1065.”

That the income tax return of Mr. Kammerdiner for the calendar year 1929 includes under Paragraph Five which relates to “Income from Partnership” the following notation: “Mr. and Mrs.

Exhibit G—(Continued)

Jas. Kammerdiner, partnership or community property, as per return submitted.”

The audit letter of the Commissioner, bearing date of August 14, 1928, over the signature of H. B. Robinson, Head of Division, and bearing Symbols IT:AR:B-10, addressed to Mr. J. Kammerdiner covering the income tax years 1925 and 1926, [28] contains the following recital:

“Your contention that a partnership existed between you and your wife during the years 1925 and 1926 and that your wife held a vested interest in such partnership as her separate property has been denied. As no specific evidence has been furnished to substantiate your contentions the total income received by you and Mrs. Kammerdiner during the years in question is considered to be community income taxable to you.” (Underscoring ours).

The Honorable Commissioner, in his audit letter for the income tax years 1925 and 1926, dated June 12, 1928, addressed to Mr. J. Kammerdiner over the signature of E. C. Wright, Internal Revenue Agent in Charge at Los Angeles, California, makes the following recital:

“Taxpayer objects to the change based on the following argument:

““The Undersigned, James A. Kammerdiner and Myrtle B. Kammerdiner, husband and wife, of Los Angeles, California, hereby state, declare and agree that the business of manufacturing, renting and selling rotary jars,

Exhibit G—(Continued)

heretofore conducted by them under the name of James A. Kammerdiner at 237 South Highland Avenue, Los Angeles, California, all of the assets of which business are their community property, is now and all increase or change thereof shall be, their joint property with [29] right of survivorship.

“In Witness Whereof we have hereunto affixed our signatures at the City of Los Angeles, California, on the 3rd day of January, 1928.’

“Taxpayers state that they had an oral agreement prior to the above, First Return as a partnership made in 1925.” (Underscoring ours).

It is apparent from the foregoing quotation that the agreement set forth was merely a recital of Exhibit “A” hereto attached.

That the principal error involved in this claim is the inclusion in the gross estate of decedent of any part of the property, title to which stood in the name of James A. Kammerdiner at the date of his wife’s death, or which was effected by Exhibit “A” hereto attached. The Commissioner, in his letter of January 26, 1938, bearing Symbols MT-ET-C1-8199-6th California, has appraised this interest at \$175,000.00 and included said sum in the gross estate of said decedent and determined a net deficiency tax on said estate of \$19,706.44 after allowing a credit of 80% against the tax for inheritance taxes paid.

Exhibit G—(Continued)

That the issue in relation to the taxability of the income of Mr. and Mrs. Kammerdiner for years prior to 1928 was reported in the case of Kammerdiner vs. Commissioner, 25 B.T.A. 495. Claimant's Exhibit "A" attached hereto and upon which he relies for relief in the instant matter was not introduced in evidence in the Board case, although said Exhibit "A" was referred to on a number of instances. We take from the Transcript of Record in the Board case, being Docket Nos. 41643 and 46555, [30] which was heard at Los Angeles, California, on June 10, 1931, the following:

Testified by Mr. Kammerdiner:

"Q. What did she do with the money that she collected?

"A. She put it in the joint account in the bank."

(R. 19, 1.3).

The Record at this point indicates that all monies from the rotary jar business were placed in a joint bank account. The Record before the Board involved years prior to 1928, this being before the execution of Exhibit "A", and at which time Mr. and Mrs. Kammerdiner had an oral agreement in relation to the income from their properties.

Mr. Kammerdiner testified as follows:

"Q. Have you ever reduced it to writing with respect to the partnership agreement?

"A. We have, in 1928, I believe—August, 1928."

Exhibit G—(Continued)

At page 24, beginning with line six of the Record before the Board, it may be noted in a colloquy between the attorneys for the taxpayer and Government that it was suggested that the audit letters to which reference has been above made be introduced in evidence, but the Government objected to the audit letters, and also to the presentation in evidence Exhibit "A", because they were all immaterial and irrelevant.

We take the following from page 26 of the Record:

"Mr. Milliken: We will show, your Honor, that this letter—in the first place, my purpose in offering it is this; that when we get into the year 1928, [31] the Government agents had contested this partnership proposition. The evidence will further show, by other witnesses, that these people executed this agreement merely because the Government told them 'We will never recognize it until you do.' Then when they did that, and with no change whatsoever ever having occurred in their relationship, for the year 1928, or the years subsequent to the appeals now before your Honor, they recognize the partnership, then we have the right of appeal to the Board, and they had a small additional tax of some \$200 recently, but which we have—which they paid.

Mr. Clark: Well, to that, I object, your Honor.

Exhibit G—(Continued)

The Member: Well, I take it that the situation is something like this: The taxpayer, as to this written agreement, partnership agreement, is contending that it was simply a reduction to writing of the oral agreement that was entered into in 1923, or whenever it was.

By Mr. Milliken:

Q. That was right, wasn't it, Mr. Kammerdiner? A. Yes."

We take the following from page 27 of the record:

"The Member: And I take it the Government's [32] position is that, the very fact that the written agreement was entered into in 1928, is to be regarded as evidence or an indication anyway, that there was no partnership prior to that date."

We take the following from page 28 of the record:

"The Member: And that thereafter, they were in business, and in 1928, when the partnership agreement was effected, it was nothing more than a reduction to writing of the original oral agreement. That is what the Government disputes, I presume.

Mr. Milliken: Well, it is a reduction to writing of the partnership agreement in 1928.

By Mr. Milliken:

Q. Was it a reduction to writing of the

Exhibit G—(Continued)

understanding or agreement that had theretofore existed since April, 1923?

A. That was our intention, yes.

Q. I believe you testified that it did not change your manner of operations or anything one iota?

A. No sir."

The taxpayer set forth in Form 706, under Schedule "Other Miscellaneous Property", a statement indicating that the business relationship of Mr. and Mrs. Kammerdiner in the business of leasing rotary jars, but in the Federal Estate Tax Return stated that [33] decedent at time of death had no taxable interest in said business includable in her gross estate.

That heretofore and on the 10th day of May, 1938, claimant herein did duly pay to the Collector of Internal Revenue, 6th District, California, the said sum of \$19,706.44 and interest thereon in the sum of \$2,384.21, making a total tax and interest of \$22,090.65, and has heretofore submitted proof of the 80 per cent credit for inheritance taxes paid.

ERROR 1

The Commissioner of Internal Revenue, having disregarded Exhibit "A" in determining tax liability, erred in including in the gross estate of the said Myrtle B. Kammerdiner any interest or value in the rotary jar business. This, by reason of the fact that the said James A. Kammerdiner did, in

Exhibit G—(Continued)

the year 1922, invent the said rotary jar and did, in the year 1922 or the year 1923 secure his original patent thereon in his own name. That title to said patent continued in his own name ever since the issuance thereof. That during all of said time the said James A. Kammerdiner was the sole owner of the patent and all other patents acquired.

It therefore follows, that if the Commissioner is not to determine tax liability under the agreement Exhibit "A", and is to disregard Exhibit "A" in the determination of the tax, then since title to Item One, "Other Miscellaneous Property", for which a value of decedent's interest was proposed at \$175,000.00 under MT-ET-C1-8199-6th California, which stood in the sole [34] name of James A. Kammerdiner and was his sole property or expectant community property, therefore unless this property was changed by agreement between husband and wife, no part thereof should be included in the wife's gross estate.

ERROR 2

That the Commissioner determined a value on decedent's interest of \$175,000.00 being one-half of the value of the said rotary jar business, together with the good will of said business, and rotary jar patents. That said Commissioner erred in assigning to the gross estate of decedent one-half of said rotary jar business. That the said Myrtle B. Kammerdiner at the time of her death had no

Exhibit G—(Continued)

interest in the rotary jar business other than that acquired under said Exhibit “A”.

That although the Commissioner of Internal Revenue gave profound consideration to Exhibit “A” attached hereto in the audit of the income tax returns of Mr. and Mrs. Kammerdiner for the calendar year of 1928 and prior calendar years, inadequate, if any, consideration was given thereto in the matter of determining the Federal estate tax, and claimant avers that under said Exhibit “A” any interest which the said Myrtle B. Kammerdiner might have had in the said rotary jar business or the patents thereto ceased at her death and she did not at any time have an interest in the corpus of said business or in the patents owned by the said James A. Kammerdiner other than the expectant interest under the California law, which ceased at her death and was not transferred by reason thereof.

That an analysis of said Exhibit “A” definitely discloses that the business or property therein referred to was community property and said Exhibit “A” was entered into for the sole purpose of converting said community property into joint tenancy property with right of survivorship. [35]

Therefore, under Section 302 of the Revenue Act of 1926 (as amended by Section 404 of the Revenue Act of 1934) and Regulations 80 (1937 Edition) Article 23, exemption from tax is specifically allowed in relation to joint tenancies in property shown to have originally belonged to the surviving joint tenant and never to have belonged to the de-

Exhibit G—(Continued)

cedent. In the instant matter the agreement having been made on the 3rd day of January, 1928, and patents having issued prior to July 29, 1927, being the date when a wife in California was given a present and equal interest in the community property under Section 161 (a) of the California Civil Code, Section 161 (a) not being retroactive or affecting property owned at the time of its enactment, and the property referred to in said Exhibit "A" being expectant community property in which no vested interest in the wife existed, the husband was the original owner of all of said property and, therefore, was the creator of the joint tenancy under said Exhibit "A", at his wife's death, the wife not having contributed thereto anything of value and not under any circumstances having any vested interest in the rotary jar business or the patents, title to which stood in the husband's name, the Commissioner erroneously included in the decedent's estate any portion of the property or patents used in or belonging to the rotary jar business.

That an examination of said Exhibit "A" indicates that no property or anything of value was transferred by reason of the death of Mrs. Kammerdiner nor incident thereto. That Mr. Kammerdiner merely succeeded to the interest which formerly and prior to the execution of Exhibit "A" had vested in him, which former interest was community property, but expectant community property [36] and not community property in which his wife had a vested or fixed interest. The nature

Exhibit G—(Continued)

of the expectant interest of the wife is set forth in the case of *Preston v. Commissioner*, 35 B.T.A. 312 (Promulgated January 21, 1937).

In California, although a husband and wife, by reason of the provisions of Section 158 of the California Civil Code, may enter into engagements or transactions with each other and may also change the character of their property, the presumption always remains, which can only be rebutted by evidence, that property acquired after marriage is community property and applies not only to property acquired by either the husband or the wife separately "but to property acquired jointly."

Biggi v. Biggi, 98 Cal. 35;

Sventinich v. Sheean, 124 Cal. 216.

The interest of the wife being community property, she had no title or vested right therein during marriage. See *U. S. v. Robbins*, 269 U.S. 315.

By reason of the foregoing, even if the Commissioner is right in assuming that under Exhibit "A" Mrs. Kammerdiner acquired some right, title and interest in the physical assets of the business and/or patents, nevertheless, such assets or any interest therein could not be properly included in her gross estate since, under Exhibit "A", title would be held in joint tenancy, and since Mrs. Kammerdiner made no contribution to the joint tenancy no part thereof could, under the Regulations, be assigned to her estate.

ERROR 3

The Commissioner erred in assigning a value of

Exhibit G—(Continued)

\$175,000.00 [37] to the interest of Mrs. Kammerdiner in the patents and the rotary jar business or assigning any value whatever thereto, but in the event that it should be determined that the Commissioner was correct in including in Mrs. Kammerdiner's gross estate a value on the patents and rotary jar business representing an interest which vested in her and which was transferred by reason of her death, then in that event claimant assigns as error the value determined as excessive and that the one-half interest which the Commissioner contends was owned by Mrs. Kammerdiner did not have a fair market value at the date of her death as determined by him of \$175,000.00, but was of a fair market value of \$100,000.00, and any value fixed over and above \$100,000.00 on the interest of said decedent in said patents and rotary jar business was excessive.

That in support of this error reference is made to the affidavit of James A. Kammerdiner dated the 18th day of November, 1937, and letter of Messrs. Lyons and Lyons, signed by Henry S. Richmond, Esq., of date June 5, 1937, and of the protest dated March 9, 1937, by claimant filed with the Honorable Commissioner of Internal Revenue, Estate Tax Division, relative to the protestation of the deficiency tax as determined in the thirty-day letter in this matter.

Conclusion

That no probate proceedings have been taken in the Estate of Myrtle B. Kammerdiner, deceased,

Exhibit G—(Continued)

and no executor nor administrator has been appointed. That the said James A. Kammerdiner, as surviving joint tenant, did duly file in the Superior Court [38] of the State of California, in and for the County of Los Angeles, his petition to terminate the joint tenancies existing between himself and his wife, Myrtle B. Kammerdiner. That a hearing was held on said petition and a decree was duly entered terminating said joint tenancies. That the said James A. Kammerdiner filed Form 706 herein as surviving joint tenant and is claimant herein as taxpayer in his individual capacity and as surviving joint tenant, the said James A. Kammerdiner having personally paid the deficiency tax upon which this claim for refund is predicated.

CERTIFICATE

I hereby certify that the foregoing claim for refund was prepared by me for and on behalf of taxpayer; that the facts recited in said claim for refund are the exact facts as given to me by the taxpayer; and to the best of my knowledge and belief are true and correct.

Dated at Los Angeles, California, this 17 day of October, 1939.

3

(Signed)

RALPH W. SMITH, with
CLAUDE I. PARKER and
RALPH W. SMITH,

808 Bank of America Building,
Los Angeles, California.

Exhibit G—(Continued)

EXHIBIT "A"

The undersigned James A. Kammerdiner and Myrtle B. Kammerdiner, husband and wife, of Los Angeles, California, hereby state, declare and agree that the business of manufacturing, renting and selling Rotary Jars, heretofore conducted by them under the name of James A. Kammerdiner, at 237 South Highland Avenue, Los Angeles, California, all the assets of which business is [39] their community property, is now and all increase or change thereof shall be, their joint property with right of survivorship.

In Witness Whereof we have hereunto affixed our signatures at the City of Los Angeles, California, on the 3rd day of January, 1928.

JAMES A. KAMMERDINER,
MYRTLE B. KAMMERDINER.

State of California,
County of Los Angeles—ss.

On this 3rd day of January, 1928, before me Kimpton Ellis, a Notary Public in and for the said county of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared James A. Kammerdiner and Myrtle B. Kammerdiner, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

Exhibit G—(Continued)

In Witness Whereof, I have hereunto set my hand and affixed my official seal in said County the day and year in this certificate first above written.

(Seal) KIMPTON ELLIS,
Notary Public in and for said County of Los Angeles,
State of California. [40]

EXHIBIT H

Treasury Department
Washington

Office of
Commissioner of
Internal Revenue

Feb. 2, 1940

Address Reply to
Commissioner of Internal Revenue
And Refer to
MT-ET-8199-6th California

Estate of Myrtle B. Kammerdiner
Date of Death—April 4, 1935

James A. Kammerdiner, Individually and as
Surviving Joint Tenant of Myrtle B.
Kammerdiner, deceased,
808 Bank of America Building,
Los Angeles, California.

Sir:

Reference is made to the claim filed on July 7, 1939 and the amended claim filed on October 18,

1939, both for refund of \$22,090.65, Federal estate tax and interest paid under the Revenue Act of 1934.

It is contended that item 1 under other miscellaneous property representing decedent's interest in a partnership determined at a value of \$175,000.00 was unlawfully included and overvalued in the decedent's gross estate. The records of the bureau show that the value of decedent's interest was determined at \$175,000.00 for the purpose of final adjustment, which adjustment was agreed to by the estate.

In view of the above and a further reconsideration of the evidence at hand there appears to be no reason to eliminate or reduce the value of the item under consideration. Accordingly, the claims filed by you on July 17, 1939 and October 18, 1939, for refund of \$22,090.65, Federal estate tax and interest thereon are rejected in their entirety.

Respectfully,

GUY T. HELVERING,

Commissioner.

By D. S. BLISS,

Deputy Commissioner.

[Endorsed]: Filed Jun. 12, 1940. [41]

[Title of District Court and Cause.]

ANSWER

Comes now the defendant in the above-entitled action and, in answer to plaintiff's complaint herein, admits, denies and alleges:

I

Admits the allegations contained in Paragraph I thereof except that defendant denies that decedent left no estate and/or made no transfers of property other than joint tenancy property set forth in Form 706 referred to in plaintiff's complaint.

II

Admits each and every allegation of Paragraph II thereof.

III

Admits each and every allegation of Paragraph III thereof.

IV

Admits each and every allegation of Paragraph IV thereof.

V

Admits each and every allegation of Paragraph V thereof.

VI

Admits each and every allegation of Paragraph VI thereof.

VII

Admits each and every allegation of Paragraph VII thereof.

VIII

Admits each and every allegation of Paragraph VIII thereof. [42]

IX

Admits each and every allegation of Paragraph IX thereof.

X

Admits the allegations contained in Paragraph

X thereof except that defendant alleges that the estate tax payment therein referred to was made on the 10th day of May, 1938, instead of on the 18th day of March, 1938.

XI

Admits each and every allegation of Paragraph XI thereof.

XII

Admits the allegations in Paragraph XII thereof except that defendant denies that the subject of said agreement of January 3, 1928, was community property of the parties; and denies that by the terms of said agreement the said Rotary Jar business and assets was transferred into community property; denies that no part of said business and its assets was or is a proper part of decedent's gross estate for estate tax purposes; denies that decedent was not the original owner of any part thereof and/or any interest therein; denies that decedent's interest was not received for a valuable and/or adequate consideration; and denies that the Commissioner failed to give due consideration to the effect of said agreement in determining the federal estate tax payable herein.

XIII

(a) Defendant denies each and every allegation of Paragraph XIII(a) thereof.

In that connection defendant alleges that the undivided one-half of such Rotary Jar business and its assets, the value of which half was included in

decedent's gross estate, never originally belonged to her surviving husband and was never received or acquired by the latter from decedent for less than an adequate and full consideration in money or money's worth, nor otherwise by him received or acquired; and that the undivided half of said business and assets, the value of which was in- [43] cluded in decedent's gross estate, was at all times, and until her death, the sole and separate property of decedent.

(b) Defendant denies each and every allegation of Paragraph XIII(b) thereof.

In that connection defendant alleges that the patents and patent rights referred to in Paragraph XIII(b) at all times until decedent's death belonged to and were a part of the assets of said Rotary Jar business.

(c) Defendant denies each and every allegation of Paragraph XIII(c) thereof.

In that connection defendant alleges that the value of one half of said business, including stock on hand, goodwill, patents and patent rights, as of the date of death of decedent, was in excess of \$175,000.00; that prior to the final assessment of the deficiency tax herein a controversy arose as to the amount of such valuation, the Commissioner contending that such value was far in excess of \$175,000.00, and plaintiff contending that such value was substantially less than said sum; that for the purpose of settling such controversy the Commissioner and plaintiff agreed that such value in con-

nection with said proposed deficiency assessment should be taken as \$175,000.00; that said agreed value was used by the Commissioner pursuant to and in reliance upon said agreement when computing and finally assessing said tax, and the amount of such deficiency tax was thereby correspondingly reduced; and that by virtue of such agreement, reliance and loss of revenue, plaintiff is estopped from now contending that such value was less than \$175,000.00.

(d) Defendant denies each and every allegation of Paragraph XIII(d) thereof.

Further answering said Paragraph XIII, defendant denies that the Commissioner erroneously and/or illegally exacted any federal estate [44] tax from plaintiff, and denies that said taxpayer overpaid his federal estate tax in any amount whatever.

Second Defense

Further answering plaintiff's complaint and as a second and separate defense thereto, defendant alleges:

XIV.

That for the calendar years 1925, 1926 and 1927 the Commissioner of Internal Revenue determined income tax deficiencies against plaintiff in the sums of \$4,220.70, \$5,969.56 and \$9,619.95 respectively; that the income which the Commissioner proposed to add to that reported by plaintiff in his tax return as his gross income for said years, and which he proposed to use in computing said tax deficien-

cies, was one-half of the net profits of the Rotary Jar business referred to in plaintiff's complaint; and that as the ground for such proposed deficiency assessments the Commissioner contended that 100% of said business and 100% of the income therefrom was community property of the type acquired by California spouses prior to July 29, 1927, and hence belonged solely to plaintiff.

That plaintiff thereupon contested said proposed deficiencies, and contended and represented to the Commissioner and the Treasury Department:

First, that he was not the sole owner of said patent, rotary jar business and income,

Second, that one-half thereof belonged to the decedent, his wife,

Third, that said patent rotary jar business was owned by him and his wife as equal partners, and

Fourth, that only one-half thereof belonged to him and that the other undivided one-half thereof belonged to the decedent, his wife, as [45] her sole and separate property.

That the Treasury Department was finally convinced of the truth of said representations, and the Commissioner acquiesced in such conviction and, in the belief that said representations were true,

First, the Commissioner failed to assess, and the Department failed to collect, said proposed deficiencies and interest thereon to the substantial loss of the Government treasury, and

Second, the Treasury Department failed to assess and collect from plaintiff income taxes attributable

to one-half of the net profits of said business for the years 1928 to 1935, inclusive, to the substantial loss of the Government.

That the time for the Government to assess and collect from plaintiff deficiency taxes for said years 1925 through 1935 is barred by limitations; that plaintiff is estopped from now contending herein that decedent, his wife, was never the sole and separate owner of said business and its assets; and that defendant is not withholding from plaintiff any funds which in equity and good conscience should be returned to him.

Third Defense

Further answering plaintiff's complaint and as a third and separate defense thereto, defendant alleges:

XV.

Defendant realleges and incorporates herein by reference each and all of the allegations contained in his Second Defense, Paragraph XIV above, the same as though set forth herein in full.

That incidental to and as an outgrowth of said income tax controversy between plaintiff and the Treasury Department relative to the years 1925, 1926 and 1927, plaintiff petitioned the United States Board of Tax Appeals for a redetermination of said deficiency proposed by the [46] Commissioner; that in his petitions plaintiff made his foregoing contentions and factual representations; that in his answers to said petitions the Commissioner denied said representations and made the said contentions urged by him as the ground for his said deficiency

determinations; that the issues thus made were tried and evidence was introduced in behalf of plaintiff and considered by the Board; that the trial of said issues resulted in findings of fact and a decision by the Board in favor of plaintiff; that the Board docket numbers of said petitions are 41643 and 46555, and that the decision of the Board is reported in 25 B.T.A. 495.

That in reliance upon said decision and the adjudications of law and fact therein made, the Commissioner did not appeal therefrom. The same became final as provided by law, and the Commissioner formally acquiesced therein (XI-2 C.B. 5).

That plaintiff is therefore estopped and barred from now raising in this action any of the said issues so decided and adjudicated by the Board; and that defendant is not withholding from plaintiff any funds which in equity and good conscience should be returned to him.

Wherefore, having fully answered, defendant prays that he be hence dismissed with his costs in this behalf expended.

WM. FLEET PALMER

United States Attorney

E. H. MITCHELL

Asst. United States Attorney

ARMOND MONROE JEWELL

Asst. United States Attorney

By E. H. MITCHELL

Attorneys for Defendant

[Endorsed]: Filed Oct. 5, 1940. [47]

[Title of District Court and Cause.]

MINUTE ORDER

This cause having been heard upon the issues raised by the Complaint and the Answer and evidence, oral and documentary, having been introduced, and the cause having been submitted to the court for decision, and the court having considered the law and the briefs of counsel, now finds in favor of the plaintiff and orders judgment ordering and decreeing that plaintiff do have and recover of and from the defendant the sum of \$22,090.65, with interest thereon at the rate of six percent per annum, from May 10, 1938.

The court is of the view that at the time of Mrs. Kammerdiner's death, the property on which the tax was collected was held in joint tenancy by the plaintiff and his deceased wife.

The joint tenancy was created in 1928, confirming the oral agreement of 1923, out of the joint earnings of the spouses, which, prior to the law of 1927, as interpreted by the Supreme Court of California and the Supreme Court of the United States, were community property, belonging in its entirety to the husband.

No estoppel has been shown. The claim of partnership for certain years, in order to overcome the opposition of the Internal Revenue Bureau to the rights granted the wife under the community property law of California, does not create an estoppel. More, the Government did not [48] acquiesce in the claim or rely on it. It contested it before the Board

of Tax Appeals. That it failed to appeal after the Board decided in favor of the taxpayers does not amount to acquiescence and reliance.

A litigant who contests a claim before an administrative tribunal and loses cannot claim estoppel because he declined to pursue other remedies.

The Government's plea of *res judicata* is not sustained.

Hence the ruling made.

Findings and judgment to be prepared by counsel for the plaintiff under Local Rule 8.

Dated this 28th day of February, 1942.

Counsel notified. [49]

[Title of District Court and Cause.]

FINDINGS OF FACT, AND CONCLUSIONS OF LAW

The above entitled cause having come on regularly to be heard the 29th day of December, 1941, before the Honorable Leon R. Yankwich, Judge Presiding, sitting without a jury, a jury having been expressly waived, plaintiff appearing by his attorneys, Messrs. Claude I. Parker and Ralph W. Smith, by Ralph W. Smith and J. Everett Blum; defendant appearing by his attorney, E. H. Mitchell, and the matter having been heard up the issues raised by the complaint and the answer, and evidence both oral and documentary having been introduced, and the cause having been submitted to

the Court for decision and the Court having considered the facts and the law, and being fully advised in the premises, now makes its findings of fact as follows:

I.

It is true that on or about the fourth day of April, 1935, [50] Myrtle B. Kammerdiner died in the City of Los Angeles, State of California, but left no estate and made no transfers of property other than Joint Tenancy property set forth in Form 706 hereafter referred to. That she was at the time of her death a resident of the City of Los Angeles, State of California, Sixth District of California. That at the time of her death she owned certain real and personal property in joint tenancy with the plaintiff herein. That upon and by virtue of her death, said real and personal property so held by her in joint tenancy with plaintiff herein vested solely in plaintiff. That plaintiff is the surviving husband of said Myrtle B. Kammerdiner.

II.

All of the facts alleged in Paragraphs II, III, IV, V, VI, VII, VIII, IX, XI, of plaintiff's complaint, having been expressly admitted by defendant's answer, the Court generally finds each and every allegation in said paragraphs of said complaint to be true.

III.

It is true that on May 31, 1939, said Commissioner of Internal Revenue, after a final audit of the said estate tax return, issued a certificate of over-

assessment covering said \$4,109.67, "Credit for State estate, inheritance, legacy or succession taxes", and interest thereon, leaving as the final redetermination of deficiency in said federal estate tax, \$19,706.44, which said amount was, as stated in paragraph VIII of Plaintiff's complaint, paid in full by plaintiff on May 10, 1938, with all interest payable thereon to the said date of payment, total payment redetermined deficiency and interest, \$22,090.65. A true copy of said certificate of over-assessment of May 31, 1939 was introduced into evidence as Exhibit F.

IV.

It is true that on or about the seventeenth day of [51] October, 1939, the said plaintiff duly and regularly filed with the said defendant, as Collector of Internal Revenue of the United States for the Sixth District of California, for transmittal to the said Commissioner of Internal Revenue of the United States an amended claim for refund of federal estate tax erroneously and illegally assessed and collected in said matter in the said sum of \$22,090.65, "(or such greater amount as is legally refundable)", and interest. Said amended claim was filed in substitution of said former claim filed as aforesaid on the 7th day of July, 1939. A true copy of said amended claim for refund was introduced into evidence as Exhibit G. That thereafter, said Commissioner of Internal Revenue, having audited said amended claim for refund, did find and determine that there had not been an overassess-

ment or overpayment of federal estate tax against or by plaintiff, individually or as such surviving joint tenant of the said Myrtle B. Kammerdiner, deceased, or the estate of said Myrtle B. Kammerdiner, deceased, in excess of the amount for which certificate of overassessment was, as stated in paragraph X of plaintiff's complaint, issued on May 31, 1939, and did therefore reject said claim for refund in its entirety by written rejection dated February 2, 1940. A true copy of said rejection in the form of a letter to plaintiff dated February 2, 1940, signed by D. S. Bliss, Deputy Commissioner of Internal Revenue was introduced into evidence as Exhibit H.

That the Commissioner of Internal Revenue in said letter of February 2, 1940, a true copy of which was introduced into evidence as Exhibit H, in referring to the interest of decedent in the rotary jar business included in the federal estate tax return, Form 706, as Item One of "Other Miscellaneous Property", states: "The records of the Bureau show that the value of decedent's interest was determined at \$175,000.00 for the purpose of final adjustment, which adjustment was agreed to by the estate." That plaintiff denies that a final adjustment was at any time made or [52] agreed to in relation to the said federal estate tax or the determined tax deficiency. And in this connection, plaintiff alleges that on the third day of January, 1928, decedent and her husband, plaintiff herein, entered into an agreement in relation to the manu-

facture, renting, and selling of rotary jars; that the subject of said agreement was community property of the parties acquired prior to July 29, 1927, and is referred to in Item One of "Other Miscellaneous Property" in the federal estate tax return, Form 706. That a copy of said agreement was introduced into evidence as Exhibit A to and a part of the said Exhibit G, as aforesaid. That by the terms of said agreement, the said business and property therein referred to was joint tenancy property and, therefore, no part of it was or is a proper part of decedent's gross estate for estate tax purposes, for the reason that the decedent was not the original owner of any part thereof and any interest, if any, therein of the decedent was not received for a valuable or adequate consideration. That said Commissioner of Internal Revenue failed to give due consideration to the effect of said agreement in determining the federal estate tax payable herein.

V.

It is true that the Commissioner of Internal Revenue of the United States erroneously and illegally exacted from plaintiff federal estate tax in the following particulars, to wit:

(a) That the Commissioner of Internal Revenue erred in including in the gross estate of the said Myrtle B. Kammerdiner any interest or value in the rotary jar business, included in the federal estate tax return herein, Form 706, as Item One of "Other Miscellaneous Property";

(b) That the Commissioner of Internal Reve-

nue erred in including as an asset of said rotary jar business the patents issued to and owned by plaintiff and securing to him the sole right to manufacture said rotary jars. [53]

(c) That the Commissioner of Internal Revenue erred in finding that one-half of said rotary jar business, including rotary jars on hand, good will, and patents issued to and owned by plaintiff was of the value of \$175,000.00, or of any value in excess of \$160,000.00;

(d) That the Commissioner of Internal Revenue erred in finding that the said rotary jar business was not owned by decedent and plaintiff either as the community property of said spouses acquired prior to July 29, 1927 or in joint tenancy created out of such community property or out of such community property and property of decedent which had been given to her by plaintiff, and, therefore, not a part of her gross estate for federal estate tax purposes;

That by reason of the foregoing, said taxpayer overpaid his federal estate tax in the amount of \$22,090.65.

VI.

It is true that the interest of Myrtle B. Kammerdiner, deceased, in the business and assets of the Kammerdiner Rotary Jar Company, and referred to in said agreement of January 3, 1928, at the time of her death was a joint tenancy interest with her husband, James A. Kammerdiner, which joint tenancy was created out of the joint earnings of the

spouses earned after their marriage and while domiciled in the State of California, and prior to July 29, 1927; that James A. Kammerdiner originally owned all of the property, which later was invested in and entered into said joint tenancy property, and decedent, Myrtle B. Kammerdiner, received no interest in said joint tenancy from the said James A. Kammerdiner for a valuable or adequate consideration, but the whole of her interest therein was received by her from the said James A. Kammerdiner by gift, without any consideration whatsoever, valuable, adequate, or otherwise. [54]

VII.

Each and every allegation contained in Paragraphs I to XIII, inclusive, of defendant's answer which is in conflict with the facts as hereinbefore found, is untrue.

VIII.

It is true that for the calendar years 1925, 1926, and 1927 the Commissioner of Internal Revenue determined income tax deficiencies against plaintiff in the sums of \$4,220.70, \$5,969.56 and \$9,619.95, respectively; that the income which the Commissioner proposed to add to that reported by plaintiff in his tax return as his gross income for said years, and which he proposed to use in computing said tax deficiencies, was one-half of the net profits of the Rotary Jar business referred to in plaintiff's complaint; and that as the ground for such proposed deficiency assessments the Commissioner contended that 100 per cent of said business and 100 per cent of the income therefrom was community

property of the type acquired by California spouses prior to July 29, 1927, and hence belonged solely to plaintiff.

That plaintiff thereupon contested said proposed deficiencies, and contended and represented to the Commissioner and the Treasury Department:

First, that he was not the sole owner of said patent, rotary jar business, and income,

Second, that one-half thereof belonged to the decedent, his wife,

Third, that said patent rotary jar business was owned by him and his wife as equal partners, and

Fourth, that only one-half thereof belonged to him and that the other undivided one-half thereof belonged to decedent, his wife, as her sole and separate property.

IX.

It is not true that the Treasury Department was finally [55] convinced of the truth of said representations, and the Commissioner acquiesced in such conviction, in the belief that said representations were true. On the contrary, it is true that the Treasury Department did not acquiesce in such conviction and did not believe that said representations were true.

X.

It is not true that the Commissioner failed to assess and the Treasury Department failed to collect said proposed deficiencies and interest thereon to the substantial loss of the Government Treasury, either for the years 1925, to 1927, inclusive, or for the years 1928 to 1935, inclusive.

XI.

It is true that during the years 1925 to 1935, inclusive, the said Myrtle B. Kammerdiner, deceased, and the said James A. Kammerdiner did each report one-half of the income received from said Kammerdiner Rotary Jar business on their respective separate income tax returns filed with the Bureau of Internal Revenue.

XII.

It is true that plaintiff is not estopped from now contending that no part of said Kammerdiner Rotary Jar business or its assets is includable in the gross estate of Myrtle B. Kammerdiner for federal estate tax purposes.

XIII.

It is true that defendant is withholding from plaintiff funds which in equity and good conscience should be returned to him.

XIV.

It is true that for the years 1925, 1926, and 1927 James A. Kammerdiner petitioned the United States Board of Tax Appeals for a redetermination of deficiencies proposed by the Commissioner against him, which proposed deficiencies were predicated upon taxing 100 per cent of the income of the Kammerdiner Rotary Jar business to James A. Kammerdiner; that the Commissioner denied [56] the allegations of said James A. Kammerdiner before the said Board of Tax Appeals; that upon trial of said matter before the Board of Tax

Appeals, the Board of Tax Appeals decided in favor of James A. Kammerdiner;

It is true that the Commissioner did not appeal from the said decision rendered by the said Board of Tax Appeals.

It is true that said decision of said Board of Tax Appeals became final, as provided by law, and the Commissioner of Internal Revenue formally acquiesced therein.

XV.

It is not true that plaintiff is estopped and barred from now contending that no part of said Kammerdiner Rotary Jar business, or the assets thereof, are includable in the gross estate of Myrtle B. Kammerdiner for federal estate tax purposes.

XVI.

It is true that the issues tried before the Board of Tax Appeals for the years 1925, 1926, and 1927, in respect to the proposed income tax deficiencies against the said James A. Kammerdiner were whether or not for the years 1925, 1926, and 1927 said James A. Kammerdiner and Myrtle B. Kammerdiner were operating the said Kammerdiner Rotary Jar business in such manner that the income received therefrom was reportable by them one-half thereof in the separate income tax return of Myrtle B. Kammerdiner and one-half thereof in the separate income tax return of James A. Kammerdiner, filed for each of said years 1925, 1926, and 1927.

XVII

It is true that beginning with at least the year 1929 the Commissioner of Internal Revenue refused to recognize that the said Myrtle B. Kammerdiner and the said James A. Kammerdiner owned or operated the said Kammerdiner Rotary Jar business or its assets as partners, but, on the contrary, found, determined, and agreed that the said James A. Kammerdiner and the said Myrtle B. Kammerdiner [57] ever since January 3, 1928, owned and operated the said Kammerdiner Rotary Jar business and its assets as joint tenants, with right of survivorship.

XVIII

It is true that the fair market value of one-half of the Kammerdiner Rotary Jar business and its assets on the date of death of the said Myrtle B. Kammerdiner was one hundred sixty thousand dollars (\$160,000.00).

CONCLUSIONS OF LAW

And as conclusions of law from the foregoing facts, the Court finds:

I

That Myrtle B. Kammerdiner and James A. Kammerdiner owned the Kammerdiner Rotary Jar business and the assets thereof as joint tenants with the right of survivorship.

II

That the property which was invested in or en-

tered into the creation of said joint tenancy property, referred to in Conclusion I hereof, was all contributed to said joint tenancy by James A. Kammerdiner, and no part thereof was contributed to said joint tenancy by Myrtle B. Kammerdiner.

III

That plaintiff is not estopped or barred from contending in this action that no part of said Kammerdiner Rotary Jar business or its assets is includable in the gross estate of Myrtle B. Kammerdiner for federal estate tax purposes.

IV

That plaintiff is entitled to judgment, ordering and decreeing that plaintiff do have and recover of and from the defendant the sum of twenty-two thousand ninety dollars and sixty-five cents (\$22,090.65), with interest thereon at the rate of [58] six per cent (6%) per annum from the 10th day of May, 1938.

Judgment is hereby ordered to be entered accordingly.

Dated this 15th day of July, 1942.

LEON R. YANKWICH,

Judge of the above entitled
Court.

Approved as to Form, this day of,
1942.

WM. FLEET PALMER,
United States Attorney.
E. H. MITCHELL,
Asst. United States Attorney.
ARMOND MONROE JEWELL,
Asst. United States Attorney.
Attorneys for Defendant.

[Endorsed]: Filed Jul. 15, 1942. [59]

In the District Court of the United States in and
for the Southern District of California, Central
Division.

No. 995-B

Civil

JAMES A. KAMMERDINER, Individually, and
as Surviving Joint Tenant of Myrtle B. Kam-
merdiner, Deceased,

Plaintiff,

vs.

NAT ROGAN, Collector of Internal Revenue of
the Sixth District of California,

Defendant.

JUDGMENT

The above entitled cause having come on regu-
larly to be heard the 29th day of December, 1941,
before the Honorable Leon R. Yankwich, Judge
presiding, sitting without a jury, a jury having been
expressly waived, plaintiff appearing by his attor-

neys, Messrs. Claude I. Parker and Ralph W. Smith, by Ralph W. Smith and J. Everett Blum, defendant appearing by his attorney, E. H. Mitchell, Esq., and the matter having been heard upon the issues raised by the complaint and the answer, and evidence both oral and documentary having been introduced and the cause having been submitted to the Court for decision, and the Court having made its findings of fact and conclusions of law, after due deliberation,

Now, Therefore, It Is Hereby Ordered, Adjudged, and Decreed that plaintiff have judgment against defendant in the sum of [61] twenty-two thousand ninety dollars and sixty-five cents (\$22,090.65), together with interest thereon at the rate of six per cent (6%) per annum from the 10th day of May, 1938;

It Is Further Ordered, Adjudged, and Decreed that plaintiff recover his costs in the sum of

Done this 15th day of July, 1942.

LEON R. YANKWICH,

Judge of the above entitled
Court.

Approved as to Form, this 6th day of July, 1942.

WM. FLEET PALMER,

United States Attorney.

E. H. MITCHELL,

Asst. United States Attorney.

ARMOND MONROE JEWELL,

Asst. United States Attorney.

By E. H. MITCHELL,

Attorneys for Defendant.

Judgment entered Jul. 15, 1942.

Docketed Jul. 15, 1942.

C. O. Book 10, Page 366.

EDMUND L. SMITH,

Clerk.

By LOUIS J. SOMERS,

Deputy.

[Endorsed]: Filed Jul. 15, 1942. [62]

[Title of District Court and Cause.]

DEFENDANT'S MOTION FOR NEW TRIAL
AND TO AMEND AND ADD FINDINGS
AND CONCLUSIONS (RULES 52(b) AND
59(a) (2).)

Defendant respectfully shows to the Court:

The Issues in Chief.

The chief issues raised by the pleadings in this estate tax case are:

1st. Whether more than half of the 1935 assets of the spouses' joint tenancy Rotary Jar business "originally belonged" to the surviving husband, and

2d. If so, whether with business services, or [63] otherwise, decedent paid for all or a portion of her joint half any consideration in money or money's worth.

The fact that such assets were owned by the

spouses at the time of the wife's death as joint tenants raised the question as stated above. (Sec. 302(e), Revenue Act of 1926, as amended in 1934.)

There was thus cast upon the plaintiff the difficult burden of establishing by clear and convincing evidence (in order to bring himself within a statutory exception to the general rule) either (1st) that none of the assets of the joint tenancy business "originally belonged" to the decedent wife, on (2d) that her joint interest was acquired from her husband for less than an adequate and full consideration in money or money's worth, and the extent, if any, of such inadequacy.

The trial court has found, as alleged by plaintiff (Complaint, Par. XII, p. 6, lines 23 and 24), that each and every asset belonging to the business in 1935 (the date of death), both tangible and intangible, was originally California community property of the type acquired before 1927; that it, therefore, "originally belonged" to the husband to the extent of 100% thereof; that no part or portion of any of such assets ever "originally belonged" to the wife; and that no part or portion of decedent's 1935 joint tenancy interest was acquired by her for "a valuable or adequate consideration"; that is, that the promised services contributed to the business by the wife were either valueless or were pure gifts by her to her husband.

Defendant admitted that the written agreement of 1928 transformed the assets of said business into

joint tenancy property (Answer, Par. XII, p. 2, line 11), but (1st), expressly denied that such assets, prior to the 1928 agreement, were community property (*idem.*, Par. XII, p. 2, lines 12 and 13), and (2d), expressly denied that the wife's half was not originally acquired by her for a valuable and/or adequate consideration (*idem.*, lines 18 and 19). [64]

The identical issue was raised by Paragraphs XIII (d) of the Complaint and Answer.

In his opening and closing briefs, plaintiff relied exclusively upon the contention that each asset of the business, at the time of death (1935), was through all its transmutations clearly traceable to old-type community property. Defendant's chief contention was that plaintiff had not clearly established that the 1935 assets of the business were not traceable to an original co-ownership by the spouses either as partners, joint adventurers, tenants in common or joint tenants. (See, for example, Defendant's Brief, p. 27, lines 15-17; p. 10, lines 4-24; p. 12, lines 25-32; p. 13, lines 6-8; p. 15, lines 10-13, and lines 21-32; p. 17, line 12, and lines 15-25; and p. 21, line 7 to p. 23, line 11.)

Error No. 1.

Insofar as concerns the ultimate question of "original" co-ownership, the Court has erroneously held (Finding IV, p. 4, lines 5-7) that under the record at hand the plaintiff, by clear and convincing evidence, traced each of the 1935 assets of the business back to old-type community property.

Were the record silent concerning the conduct,

declarations and unusual agreements of the spouses, prior to the written joint tenancy contract of January 3, 1928 (Plaintiff's Ex. 9), such decision of the Court might be justified. Agreements are not necessary to the creation of community property. Like dower, it is a creature of law and is seldom founded on contract. Plaintiff does not contend that any community property here resulted from an agreement, and we have in this case no evidence whatever of a "community property" agreement. Hence, the Court's finding that 100% of the joint tenancy property was clearly traced to old-type community property cannot stand without first finding that the written joint tenancy agreement of 1928 was not only the first, but was the only, agreement respecting [65] property or earnings ever entered into by the spouses.

In the face of the uncontradicted testimony of the plaintiff and the numerous uncontradicted oral and written admissions and declarations of both spouses concerning "co-ownership" (*Azevedo v. Sequeira*, 132 C. A. 439, 22 P. (2) 745) and the actual existence of a "co-ownership" agreement dating from the time of their marriage, it is difficult to see how the Court's contrary finding can stand. The overwhelming and uncontradicted evidence to which we refer is summarized on pp. 11 to 23 of defendant's brief and need not be here repeated. Suffice to say that it establishes beyond question that the spouses entered into an oral property and earnings "co-ownership" contract of some type

shortly after the 1908 marriage, and that it, or some other type of "co-ownership" relationship, continued in force until the wife's death.

The agreement or agreements necessarily created either joint business ventures or business partnerships or both; relationships which were then entirely foreign to most marriages. The uncontradicted evidence of conduct throughout marriage likewise shows that each spouse contributed personal services to their joint enterprises, and that all assets thereof and income therefrom were owned by them in equal proportions.

Such evidence does not support a finding of normal, sole ownership by a California husband of old-type community property, a type of property relationship which arises without agreement and without the actual performance of even one household duty by the wife.

Error No. 2.

The second set of erroneous findings are to the effect that none of the decedent's 1935 joint tenancy interest in the several assets of the jar business was acquired by her for an adequate or full consideration in money or money's worth; that is, that she received her interest as a pure "gift" from her husband. (Finding IV, p. 4, lines [66] 15-17; and Finding VI, p. 5, lines 26-31.)

There is no evidence to support such findings. Without contradiction the record establishes the extra-marital business activities of the wife during the six years between 1909 and 1915. (Defendant's

Brief, p. 13, lines 14-28.) The earnings of each spouse on the Brae Lease were placed in a single joint account; "a 50-50 split" was made pursuant to an agreement between the spouses, which agreement was the same as the partnership or joint-adventure agreement of 1923. (Tr. pp. 31-33.) In 1923 the wife's one-half share of this joint account exceeded \$3,000.00 (Tr., p. 17), and a portion of it was then invested in the infant Rotary Jar business. (Defendant's Ex. 16, pp. 8, 35, 37, 51 and 71.)

Later and during the last twelve years of her life (1923-1935) decedent worked full time in the Rotary Jar business, not for pleasure or as a gift to her husband, but pursuant to a contract with him relating "to the marketing, sale and ownership of this patent . . . it was decided" that the husband would do the field work and "she would do the office work", and profits, if any, would be divided between them. (Defendant's Ex. 16, p. 11.) The husband needed a business partner (*idem.*, p. 15), not a mere housewife. The agreement related "to all the rights" then owned and "all the rights" which might be thereafter acquired "in the patent, or to the patent, or to the rights". (*Idem.*, pp. 43-44.) The agreement related "to what rights" each spouse should have. Each was "to take a share alike, fifty-fifty". (*Idem.*, pp. 53-54.) Under the agreement both were to "work in the business" and in consideration thereof the wife was to receive an "interest in one-half of property and income . . . ". (Defendant's Exs. 19, 20, 21; and 14-(b).

15, 17 and 18.) The foregoing evidence is uncontradicted.

Some of the valuable services rendered the jar business by the wife over the 12-year period are listed in defendant's brief, p. 18, lines 11 to 24, and p. 19, line 8 to p. 20, line 12. Such are not the domestic services for which California wives were, in theory, rewarded [67] with expectant interests in old-type community property. Mrs. Kammerdiner's services were extraordinary, were of actual value to the business, and were rendered unquestionably pursuant to an express contract with her husband. Since they were not "domestic services which are incidental to the marital status", the plaintiff's agreement to compensate his wife therefor is not void as against public policy. *Moore v. Crandall* (C.C.A. 9th), 205 Fed. 689, construing the California law; and *Re Cox* (D.C.), 199 Fed. 952, which arose in New Mexico. Cf. *Brooks v. Brooks* (Cal. App. . . 1941), 48 A. C. A. 397 (2b), 399, 119 P. (2) 970 (3), 972.)

"The services of a wife may be recognized as a consideration (within the meaning of Sec. 302 (e) of the 1926 Act) where there is an understanding between husband and wife that they should be a partial contribution to her equal share in all property acquired."

Randolph E. Paul (1942), *Federal Estate & Gift Taxation*, Vol. 1, p. 405.

Let us now assume that the oral Rotary Jar business agreement of 1923 created between plaintiff

and his wife the relationship of employer and employee, respectively, instead of that of partners or joint adventurers; and that decedent's joint tenancy interest was received as mere compensation for services rendered by her pursuant to such contract of employment. Upon the record, this assumption is the most favorable to the plaintiff. Can it be reasonably said that such compensation was paid to her without a valuable consideration? The answer to this question may also be found in *Moore v. Crandall*, *In re Cox*, and *Brooks v. Brooks*, cited *supra*.

Whether the 1923 agreement created the relationship of joint adventurers, partners, or employer and employee, it admittedly required the contribution of valuable services by the wife, which services were actually rendered, and for which services, pursuant to the same contract, decedent was rewarded with her ultimate joint tenancy half interest. The value of such interest was therefore includable [68] in her gross estate.

Randolph E. Paul, *supra*;

Richardson v. Helvering (App. D. C.), 80 F. (2d) 548; and

Estate of Lester L. Fletcher (1941), 44 B.T. A. 429, No. 70.

There is no evidence, substantial or otherwise, to support the finding that the whole of decedent's 1935 joint tenancy interest in the business was received from plaintiff "by gift". (Finding VI, p.

5, lines 28-30.) In fact, the evidence is directly to the contrary.

The trial court's implied finding that none of the 1935 assets of the Rotary Jar business was attributable to the valuable services of the decedent is just as clearly erroneous as is its implied finding that all of such 1935 assets, including good will, were attributable solely to the husband's services and/or the basic patent.

In this latter connection it is to be borne in mind that the patent rights were used by the business enterprise, and by no one else, continuously from 1923 until the wife's death in 1935, pursuant to an express agreement to that effect. The firm therefore was at all times the equitable or beneficial owner of all such rights. While the legal title to the patent stood in plaintiff's name, he held such title in trust for the enterprise or firm, which firm or enterprise was at all times the real owner.

Hill v. Miller, 78 Cal. 149, 20 P. 304.

This rule applies to all property, real or personal, used by a partnership.

Bastjan v. Bastjan (1932), 215 Cal. 662, 12 P.(2) 627(4), 629;

Perelli-Minetti v. Lawson, 205 Cal. 642, 272 P. 573; and

Lamb v. Hall, 147 Cal. 37, 81 P. 286. [69]

But even had plaintiff been at all times the sole owner of the patent and patent rights, it must also be borne in mind that the value of these patent rights was purely speculative until 1924 after nearly

a year's contracted services had been expended by the two spouses in commercially exploiting them (Tr. pp. 19, 46 and 47), and that some \$85,000 of the admittedly co-owned joint-tenancy, tenancy in common or partnership income was invested in protective patents prior to the wife's death. (Tr., p. 82, line 20 to p. 85, line 25.) It would be wholly unreasonable to say that the subsequent great value of the firm's rights under the patent and the later substantial profits of the business were, to the extent of 100%, attributable solely to the original basic patent, and that no proportion whatever thereof can be attributed to the services of, and the management of the business by, the wife.

Noteworthy also is the fact that the plaintiff made no effort whatever to establish the proportion of the 1935 values which was attributable to original capital and the proportion thereof attributable to services.

Since the taxpayer failed to present any evidence tending to prove the valuelessness of the wife's promised business services, there is nothing to support the trial court's implied findings to the effect that such services had no value or that they were a gift to her husband. (Cf. *Rogan v. Riggle* (1942-C.C.A. 9th), 182 F.(2d) 118 (3), 120.)

Error No. 3.

There is no evidence to support the finding to the effect that the patent rights were owned by plaintiff only, to the effect that the patents secured to him the sole right to manufacture said rotary

jars, and to the effect that the patents or rights thereunder were not assets of the rotary jar business. (Finding V (b), p. 4, lines 29-32.) [70]

Error No. 4.

There is no evidence to support the trial court's Findings IX, X, XII and XIII.

Error No. 5.

There is no evidence to support the trial court's Findings XV and XVII.

Error No. 6.

Conclusion I is incomplete, since it fails to specify the date that the spouses commenced to own the jar business and the assets and income thereof as joint tenants. Such date is essential to the Court's decision and should be expressly found.

Error No. 7.

Conclusions II and III are not supported by the findings, by the evidence, or by the law.

Error No. 8.

In his Third Defense to plaintiff's complaint, defendant, on pages 5 and 6 of his answer, affirmatively alleged that the following issues of fact were involved, and were tried and decided by the Board of Tax Appeals, in the case of *J. Kammerdiner v. Commissioner*, 25 B.T.A. 495, to wit:

1st. Whether in the year 1925 the property and income of the Rotary Jar business was community property.

2d. Whether in the year 1925 plaintiff was the sole owner of the patent, the Rotary Jar business and its income;

3d. Whether in the year 1925 an undivided one-half of such patent, business and income belonged to his wife;

4th. Whether in said year the assets and income of said business were owned by plaintiff and his wife as equal partners; and [71]

5th. Whether in said year one-half thereof belonged to the decedent wife.

In response to such allegations (issues in this case) the trial court has made no findings or conclusions whatever.

Since they are the most material facts alleged by defendant in support of his defense of *res adjudicata*, defendant feels that he is entitled to specific findings thereon, and respectfully requests that they, whether affirmative or negative, be made by the Court at this time.

Error No. 9.

The issues of fact and law, set forth below, are vital and material in this case and have been raised and presented to the trial court for decision. The Findings and Conclusions are silent in respect of these issues. In the event of appeal, a reviewing court would find it most difficult to determine the many and complicated reasons and grounds upon which the judgment may have been based. For these reasons, and because the defendant is entitled to express findings and conclusions in response to such issues (Rule 52(a)), it is respectfully requested that the trial court now expressly make special findings or conclusions, either affirmative or negative, upon the following questions, to wit:

(a) Whether the personal services contributed by the wife to the jar business were valueless.

(b) Whether the wife contributed her services to the jar business pursuant to an understanding or agreement with her husband, and, if so, a finding as to the terms of such understanding or agreement.

(c) Whether the services contributed by the wife to the business were, in fact, a gift to her husband.

(d) Whether such services were domestic and “incidental to the [72] marital status”.

(e) A conclusion as to whether “the decedent (wife) contributed toward the acquisition of” her 1935 joint tenancy interest in the business, within the meaning of Art. 22 of Regulations 80 (1934 Ed.).

(f) A conclusion as to whether the outlay by the spouses of some \$85,000 of joint tenancy funds for protective patents constituted “an outlay of funds, which, in the first instance, were decedent’s own”, within the meaning of Art. 23 of Regulations 80 (1934 Ed.).

(g) A conclusion as to whether the decedent (wife) “furnished a part only of the purchase price” in the acquisition of any of the assets of the joint tenancy business, within the meaning of Art. 23(b) of Regulations 80 (1934 Ed.), and, if so, a finding specifying the particular assets in the purchase of which she furnished a part of the purchase price and the exact proportion thereof furnished by her.

Defendant moves that an order be entered herein granting the defendant a new trial because of the errors specified above. Defendant further moves that the findings and conclusions of the Court be now amended, for the reasons and in the particulars above set forth, and that the Court now make additional findings and conclusions requested supra upon the foregoing issues of law and fact.

This motion will be made upon the pleadings, Reporter's Transcript, exhibits, briefs, and the Findings and Conclusions, on file in this case, and upon the foregoing points and authorities.

Dated: July 22, 1942.

WM. FLEET PALMER,
United States Attorney.

E. H. MITCHELL,
Assistant United States At-
torney.

By E. H. MITCHELL,
Assistant United States At-
torney,
Attorneys for Defendant.

[Endorsed]: Filed Jul. 22, 1942. [73]

[Title of District Court and Cause.]

NOTICE OF HEARING

To: James A. Kammerdiner, Plaintiff, and Claude
I. Parker, Ralph W. Smith, W. H. Gentry and
J. Everett Blum, His Attorneys:

You and Each of You Will Please Take Notice
that the defendant will call for hearing his Motion
for New Trial and to Amend and Add Findings
and Conclusions under Rules 52(b) and 59(a)(2) at
10:00 o'clock, A. M., on Monday, the 3d day of Au-
gust, 1942, or as soon thereafter as counsel can be
heard, in Courtroom No. 5, before the Honorable
Leon R. Yankwich, in the Post Office and Court
House Building on Spring and Temple Streets in
the City of Los Angeles, [74] California.

Dated: July 22, 1942.

WM. FLEET PALMER,
United States Attorney.

E. H. MITCHELL,
Assistant United States At-
torney.

By E. H. MITCHELL,
Assistant United States At-
torney,

Attorneys for Defendant.

[Endorsed]: Filed Jul. 22, 1942. [75]

At a stated term, to wit: The February Term, A. D. 1942, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Wednesday the 5th day of August in the year of our Lord one thousand nine hundred and forty-two.

Present:

The Honorable: Leon R. Yankwich, District Judge.

[Title of Cause.]

This cause now coming before the Court, it is ordered that motion for a new trial, heretofore submitted, be, and it hereby is, denied, and that the motion of the defendant to amend and add findings and conclusions be, and it hereby is, denied. [76]

[Title of District Court and Cause.]

NOTICE OF APPEAL

To: James A. Kammerdiner, Plaintiff, and Claude I. Parker, Ralph W. Smith, W. H. Gentry and J. Everett Blum, His Attorneys:

Notice is Hereby Given that Nat Rogan, as Collector of Internal Revenue for the Sixth Collection District of California, the Defendant above named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the final judgment entered in this action on July 15, 1942.

Dated: October 20, 1942.

LEO V. SILVERSTEIN,
United States Attorney.

E. H. MITCHELL,
Assistant United States At-
torney.

By E. H. MITCHELL,
Attorneys for Defendant-Appellant.

[Endorsed]: Filed and mld. copy to attys. for
plf. Oct. 20, 1942. [77]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO DOCKET
CAUSE ON APPEAL.

Upon motion of Defendant-Appellant, and good
cause appearing therefor:

It Is Hereby Ordered that the time within which
to file the record and docket the above-entitled cause
in the United States Circuit Court of Appeals for
the Ninth Circuit be, and the same hereby is, ex-
tended to and including the 17th day of January,
1943.

Dated this 25th day of November, 1942.

LEON R. YANKWICH,
United States District Judge.

[Endorsed]: Filed Nov. 25, 1942. [78]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO DOCKET
CAUSE ON APPEAL

Upon motion of Defendant-Appellant, and good cause appearing therefor:

It Is Hereby Ordered that the time within which to file the record and docket the above-entitled cause in the United States Circuit Court of Appeals for the Ninth Circuit be, and the same hereby is, extended to and including the 18th day of January, 1943.

Dated this 12th day of January, 1943.

LEON R. YANKWICH,

United States District Judge.

[Endorsed]: Filed Jan. 12, 1943. [79]

[Title of District Court and Cause.]

STIPULATION RE RECORD ON APPEAL

Whereas, the defendant in the above-entitled action has taken an appeal from the judgment in this case to the United States Circuit Court of Appeals for the Ninth Circuit, and the record therein consists, among other things, of 55 written exhibits that were introduced in evidence by the parties; and

Whereas, it is the desire of the parties hereto, in order to save the time, labor and expense of making photostatic copies, to facilitate printing and to permit inspection by the Appellate Court of the

originals, that said original documents be sent to the said Court in lieu of copies;

Now, Therefore, It Is Hereby Stipulated and Agreed, by and between the parties, through their respective counsel undersigned, that the originals of all plaintiff's Exhibits, and defendant's Exhibits Nos. 1 to 36, inclusive, be sent to the Appellate Court in lieu of copies. [80]

Dated: January 13, 1943.

LEO V. SILVERSTEIN,
United States Attorney.

E. H. MITCHELL,
Assistant United States At-
torney.

By E. H. MITCHELL,
Attorneys for Defendant-Appellant.

CLAUDE I. PARKER,
RALPH W. SMITH,
JOHN MOORE ROBINSON,
By RALPH W. SMITH,
Attorneys for Plaintiff-Appellee.

It is so ordered this 14th day of January, 1943.

LEON R. YANKWICH,
Judge of the District Court.

[Endorsed]: Filed Jan. 14, 1943. [81]

[Title of District Court and Cause.]

DEFENDANT'S DESIGNATION OF CON-
TENTS OF RECORD ON APPEAL

Defendant and appellant requests that the complete record and all the proceedings and evidence in the above-entitled action be incorporated in the record on appeal, including the following:—

1. Plaintiff's complaint.
 2. Defendant's answer.
 3. Reporter's transcript of proceedings of December 29, 1941.
 4. All of the Plaintiff's Exhibits numbered 1 to 18, inclusive.
 5. All of the Defendant's Exhibits numbered 1 to 37, inclusive.
 6. The trial court's minute order of February 28, 1942, ordering findings, conclusion and judgment in favor of the plaintiff.
 7. Findings of fact and conclusions of law, dated and filed July 15, 1942.
 8. Judgment dated and entered July 15, 1942.
- [82]
9. Defendant's motion for new trial and to amend and add findings and conclusions, dated and filed July 22, 1942.
 10. Notice of hearing said motion (No. 9 above), dated and filed July 22, 1942.
 11. Minute order of Judge Yankwich, dated and entered August 5, 1942, denying defendant's said motion, No. 9 above.

12. Notice of appeal by defendant, dated and filed October 20, 1942.

13. Order extending time to docket cause on appeal, dated and filed November 25, 1942.

14. Order extending time to January 18, 1943, to docket cause on appeal, dated and filed January 12, 1943.

15. This designation of portions of the record to be contained in the record on appeal.

Dated: January 12, 1943.

LEO V. SILVERSTEIN,
United States Attorney.

E. H. MITCHELL,
Assistant United States At-
torney.

By E. H. MITCHELL,
Attorneys for Defendant-Appellant.

[Endorsed]: Filed Jan. 12, 1943. [83]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify the foregoing pages, numbered from 1 to 83, inclusive, contain full, true and correct copies of Complaint; Answer; Minute Order of February 28, 1942; Findings of Fact and Conclusions of Law; Judgment; Defendant's Motion for New Trial and to Amend and Add Findings and Conclusions; Notice of Hearing; Minute Order of August 5, 1942; Notice of Appeal; two Orders Extending Time to Docket Cause on Appeal; Stipulation re Record on Appeal; and Designation of Contents of Record on Appeal, which together with Reporter's Transcript of Testimony and original exhibits transmitted herewith, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

Witness my hand and the Seal of the District Court of the United States for the Southern District of California, this 16 day of January, A. D. 1943.

(Seal)

EDMUND L. SMITH,
Clerk.

By THEODORE HOCKE,
Deputy Clerk.

[Title of District Court and Cause.]

TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Monday, December 29, 1941

10:00 o'clock a. m. [2*]

The Court: All right. Proceed.

What is the entire amount involved, or has it been computed?

Mr. Smith: \$22,090.65.

If your Honor please, it appears from the answer that the Exhibits to our complaint are admitted, and we therefore offer this in evidence.

Mr. Mitchell: We admit that they are correct copies.

The Court: You had better take them one by one.

Mr. Smith: We will offer them in evidence.

The Court: Perhaps the Government has photo-static copies of those things.

Mr. Mitchell: No, your Honor. I may have one of them.

The Court: Let's take them one by one.

Mr. Smith: We will offer now our Exhibit A.

Mr. Mitchell: Just a moment. Let me refresh my memory.

The Court: Exhibit A is the letter from the Treasury Department dated January 18th, 1937.

Mr. Mitchell: No objection. That is a correct copy.

* Page numbering appearing at top of page of original Reporter's Transcript.

The Court: Exhibit A of the complaint is received by reference as Plaintiff's Exhibit 1.

(The document referred to was received by reference as "Plaintiff's Exhibit No. 1".)

[Plaintiff's Exhibit No. 1 is set out as Exhibit A of the complaint, on page 12 of this record.]

Mr. Smith: Next we will offer, if your Honor please, [7] our Exhibit B.

The Court: Exhibit B is also from the Treasury Department, Office of the Commissioner of Internal Revenue, and is dated November 10th, 1937.

The Clerk: Plaintiff's 2.

Mr. Mitchell: No objection.

The Court: It will be received as Plaintiff's 2.

(The document referred to was received in evidence and marked "Plaintiff's Exhibit No. 2.")

[Plaintiff's Exhibit No. 2 is set out as Exhibit B of the complaint, on page 17 of this record.]

The Court: Exhibit C is received as Plaintiff's 3, the letter of January 26th, 1938.

Mr. Mitchell: No objection.

(The document referred to was received in evidence and marked "Plaintiff's Exhibit No. 3.")

[Plaintiff's Exhibit No. 3 is set out as Exhibit C of the complaint, on page 20 of this record.]

Mr. Smith: We offer Exhibit D as our next.

The Court: Exhibit D will be Plaintiff's 4.

Mr. Mitchell: No objection.

The Court: It is the letter of March 18th, 1938.

(The document referred to was received in evidence and marked "Plaintiff's Exhibit No. 4.")

[Plaintiff's Exhibit No. 4 is set out as Exhibit D of the complaint, on page 23 of this record.]

Mr. Smith: Exhibit E.

The Court: Exhibit E is 5, and is a letter dated April 26th, 1939.

Mr. Mitchell: No objection.

(The document referred to was received in evidence and marked "Plaintiff's Exhibit No. 5.") [8]

[Plaintiff's Exhibit No. 5 is set out as Exhibit E of the complaint, on page 24 of this record.]

The Court: Exhibit F is dated March 31, 1939. It will be received as 6.

Mr. Smith: May 31, is it not?

The Court: May 31, 1939, that is right.

Mr. Mitchell: No objection.

(The document referred to was received in evidence and marked "Plaintiff's Exhibit No. 6.")

[Plaintiff's Exhibit No. 6 is set out as Exhibit F of the complaint, on page 25 of this record.]

The Court: Exhibit G is the amended claim and substitution of former claim filed as of the 7th day of July, 1939.

Mr. Mitchell: No objection to the introduction of that, your Honor. However, naturally the Government doesn't agree to the contentions made in the refund claim.

The Court: Well, that is to show that a dispute existed between the claimant and the taxing power.

Mr. Mitchell: That is true, your Honor.

The Court: And that the very controversy which is brought into court was before them. Otherwise, we have no jurisdiction. They have to show that they laid this very claim before the Commissioner.

Exhibit G is——

The Clerk (Interrupting): G is 7, your Honor.

The Court: Yes. It will be received.

(The document referred to was received in evidence and marked "Plaintiff's Exhibit No. 7.")

[Plaintiff's Exhibit No. 7 is set out as Exhibit G of the complaint, on page 27 of this record.]

The Court: Exhibit E contains the amended claim and [9] the arguments in support of it, consisting of some 15 typewritten pages.

The Clerk: That is still part of G.

The Court: G consists of an amended claim written on the regular printed form, plus the argument in support of it, which begins on page 2.

Mr. Mitchell: I might make the record clear.

The Government does not stipulate to the genuineness of Exhibit A attached to the refund claim, page 36.

The Court: All right. Well, you may stipulate that the document, as in this wording, was filed with the Commissioner.

Mr. Mitchell: We so stipulate.

The Court: All right. I see. Exhibit H—— [10]

Mr. Smith (Interrupting): That is the letter of rejection of the claim.

The Court: Letter of the final rejection of the claim, dated February 2, 1940.

Mr. Smith: That is why we are here.

Mr. Mitchell: No objection.

The Clerk: Plaintiff's 8.

(The document referred to was received in evidence and marked "Plaintiff's Exhibit No. 8.") [11]

[Plaintiff's Exhibit No. 8 is set out as Exhibit H of the complaint, on page 45 of this record.]

Mr. Bloom: One of the issues, your Honor, in the event that your Honor decides in favor of the defendant, will be the value of this business, and in order to eliminate that issue from the case, it is stipulated that one-half the value of the rotary jar business and its assets, including rotary jars, patents, patent rights, good will, for estate tax purposes, on the basic date, was \$160,000.00.

Mr. Mitchell: So stipulated. [12]

JAMES A. KAMMERDINER

called as a witness by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name, please?

The Witness: James Allen Kammerdiner.

Direct Examination

By Mr. Smith:

Q. State your name?

A. James Allen Kammerdiner.

Q. Myrtle B. Kammerdiner was your wife?

A. Yes.

Q. She is deceased? A. Yes.

Q. What year? A. '34.

The Court: '35 or '34?

The Witness: '34—or '35.

By Mr. Smith:

Q. '35 was it?

A. Yes; six years ago. [13]

Q. And she was a resident of this County.

A. Yes.

Q. And of this State? A. Yes.

Q. You were married in what year?

A. 1908.

Q. 1908? A. Yes.

Q. Was that in Los Angeles, County of Los Angeles? A. County of Orange.

Q. In Orange County? A. Yes.

Q. And you and Mrs. Kammerdiner had been

(Testimony of James A. Kammerdiner.)

residents of this community for some time prior to that time? A. Yes.

Q. At the time of marriage, did Mrs. Kammerdiner have or own any property, and if so, to what extent?

A. None that I knew of, no, sir.

Mr. Mitchell: What was the answer?

The Witness: No.

By Mr. Smith:

Q. No property? A. No, sir.

Q. Did you have any property at the time of marriage? A. No, sir.

Q. I want to refresh your recollection, if I may. [14]

Did you, prior to your marriage and after your engagement to Mrs. Kammerdiner, forward to her any checks that you may have earned?

A. Yes. I was working——

Mr. Mitchell: That is objected to on the ground it is immaterial.

Mr. Smith: It is just to refresh his recollection.

The Court: Well, I can't tell, gentlemen. In these husband and wife relations, a lot of things go back for many years and it is very difficult to tell in such a stage whether this is material or not.

[15]

Mr. Mitchell: Objected to on the further ground it is not the best evidence.

The Court: Well, I will allow the particular question.

(Testimony of James A. Kammerdiner.)

By Mr. Smith:

Q. Mr. Kammerdiner, did you have any property of any value at the time of marriage, and if so, about what was the extent?

A. No, any more than I would say a couple of hundred dollars.

Q. A couple of hundred dollars?

A. Yes.

Q. What work did you continue to do after marriage? A. Drilling oil wells.

Q. In 1923 were you still drilling oil wells? [16]

A. Yes.

Q. And during that time did your wife make any money that amounted to anything?

A. Right along in that time, no.

Mr. Mitchell: What time?

Mr. Smith: From 1908 to 1923.

The Witness: Yes, sir, she made some money in there.

By Mr. Smith:

Q. What did she do?

A. She ran a boarding house.

Q. Just tell us how this boarding house was run?

A. I don't know how to answer that.

Q. Did you run it, or did she or both of you?

A. It was run, yes. It was on a lease where I was and she did the working part of it.

Q. And she took in boarders?

(Testimony of James A. Kammerdiner.)

A. Well, yes. There were sixty or eighty of them.

Q. And there was some money made in that venture? A. Yes.

Q. Did you have any agreement with her as to who that money belonged to?

A. We had a checking account here in the city and we just moved the money in there and it was a joint account.

Q. Did you have any agreement with her?

Mr. Mitchell: Just a moment. I object to that question as calling for the conclusion of the witness. [17]

The Court: In a matter of this character, gentlemen, where the actions of the parties are the ones which must determine what, if any, agreement existed, I think leading questions as to whether there was an agreement don't help much. State what they talked about, what they decided in regard to their monies or properties, what was to be done with them.

By Mr. Smith:

Q. What was said relative to the boarding house money, if anything?

A. Well, I had lots of work to do outside. I had four wells to take care of and we decided that she would take care of the boarding house and I would take care of the work outside, practically the same thing as we had in the jar business, practically the same thing all along the line.

(Testimony of James A. Kammerdiner.)

Q. "In the jar business," that would mean the rotary jar business? A. Yes.

Q. And the interest therein, which is involved here? A. Yes.

Q. Did you have any discussion about that, as to who would own it or what your rights would be in it?

Mr. Mitchell: About what? The jar business?

Mr. Smith: Yes. And also the patent.

The Witness: Yes, we had a talk on that on account of her being able to take care of the office work, and I [18] was able to take care of the work out in the field.

Q. When was that discussion?

A. It was decided that——

Q. About what year was it?

A. It was '23.

Q. '23? A. Yes.

Q. What was the substance of your discussion?

A. Well, we were to divide 50-50, win or lose. It was very questionable whether we could make any money at it, but we did make some money in the long run.

Q. Tell us about the inception of this jar business, how it was started and what it consisted of?

A. It is pretty hard to explain that.

Q. We know nothing about it here. Tell us about the jar business, what it was. Just tell the Court what it was. A. It is a——

Q. Did you devise it or someone else?

(Testimony of James A. Kammerdiner.)

A. I did.

Q. Tell us about how you happened to do it, the history?

A. I was working for the Union Oil Company and I had nine wells to take care of, and one morning I had four of them fishing lost tools and stuff in the hole. I got the idea that if I had something to go in and get ahold of those [19] lost parts, I could shake them out of there and bring them out of the sand, and I devised this tool and it was a great help.

Q. What was the tool called?

A. The Kammerdiner rotary jar.

Q. Kammerdiner Rotary jar? A. Yes.

Q. That was in '22 or '23? A. '23.

Q. '23? A. Yes.

The Court: Was that a fishing tool?

The Witness: It really wasn't a fishing tool; it was to go on top of a fishing tool. When you got ahold of anything that couldn't be pulled, why you could strike a blow at it, an upward blow, and striking that blow, by that we got out many, many jobs, hundreds of them.

The Court: It would jar it loose?

The Witness: Yes.

The Court: Instead of cutting it, you would jar it loose; is that the idea?

The Witness: Well, in some cases they cut pipe, but this is where you get hold of it and stretch the

(Testimony of James A. Kammerdiner.)

pipe up three, four or five feet then turn, and it slips and strikes the blow. It strikes upward.

The Court: The reason I am asking is I am familiar [20] with the operations of the tools because I have handled several patent cases on the fishing tools.

The Witness: Is that so?

The Court: Yes.

The Witness: They have cutters where they go in and cut pipes.

The Court: I know.

The Witness: I had one of those myself once.

By Mr. Smith:

Q. In relation to this type of tool, the patent, was yours the original patent or otherwise?

A. Yes, it was the original patent.

Q. The first patent of that type in the field?

A. Yes, it was the first trip jar.

Q. Did you improve or develop it, or buy new protective patents? A. Yes, sir.

Q. And you have many of them now, I assume?

A. Yes.

Q. Which are the valuable ones and which are the ones of lesser value, as you would estimate it?

A. You mean which is the most valuable now?

Q. Yes.

A. Well, it is hard to determine that.

Q. Well, at the time of Mrs. Kammerdiner's decease?

A. That was the Kammerdiner rotary jar. [21]

(Testimony of James A. Kammerdiner.)

Q. That was the first one you had?

A. Yes.

Q. How much of the value would be in that?

A. Well, that would be hard to determine.

Q. If you hadn't had that patent, could you have protected yourself with the others you got?

A. No.

Q. In other words, that was your basic patent, you called it; is that right? A. Yes.

Q. And was most of your value in that patent?

A. Yes. That patent, though, now has——

Q. I am not talking about now. I am talking about 1935. We are talking about nothing that happened after 1935.

I will show you what purports to be an agreement, and ask if you have seen that document before and what it is? A. Yes.

Q. And what is it, Mr. Kammerdiner? I mean who signed the document?

A. It is James A. Kammerdiner and Myrtle B. Kammerdiner.

Q. That is your signature? A. Yes.

Q. That is your wife's? A. Yes. [22]

Q. Do you recall the circumstances and the time when you signed it? A. Yes.

Q. On January 3rd, 1928? A. Yes.

Q. Who prepared that?

A. Mr. Ellis, I think.

Q. Mr. Kimpton Ellis? A. Yes.

Q. And had you had any agreement prior to executing this written agreement with your wife?

(Testimony of James A. Kammerdiner.)

Mr. Mitchell: Just a minute. I object to that on the ground it calls for the conclusion of the witness.

By Mr. Smith:

Q. Had you had any business arrangement, I will put it that way, with your wife previous to executing this agreement? A. Yes.

Mr. Mitchell: That is objected to further on the ground that it has already been asked and answered.

The Court: Overruled.

By Mr. Smith:

Q. And how did that business arrangement differ from this writing?

A. Well, I wouldn't say any different.

Q. Was it the same? [23]

A. The same thing.

Q. And that business arrangement was made in what year with your wife? A. '23.

Q. Was that at the time that you devised and patented or invented this rotary jar? A. Yes.

Q. And that business arrangement, had it been changed at any time prior to the executing of this agreement? A. No, sir.

Q. Was this agreement altered or changed in any way after its execution? A. No, sir.

Q. Was it in full force and effect at the time of the death of your wife? A. Yes, sir.

Mr. Smith: We will offer it in evidence and we will ask, if your Honor please, that it be in substitution of our "A" to Exhibit G. This is the one Mr. Mitchell said that they would require proof on.

(Testimony of James A. Kammerdiner.)

The Court: You don't substitute it because it confuses the matter. Merely give it a separate number, just so we identify it as the same thing which is already in as a part of G. What would the next number be?

The Clerk: Plaintiff's 9.

The Court: It may be received as Plaintiff's 9. [24]

(The document referred to was received in evidence and marked "Plaintiff's Exhibit No. 9.")

PLAINTIFF'S EXHIBIT No. 9

The undersigned James A. Kammerdiner and Myrtle B. Kammerdiner, husband and wife, of Los Angeles, California, hereby state, declare and agree that the business of manufacturing, renting and selling Rotary Jars, heretofore conducted by them under the name of James A. Kammerdiner, at 237 South Highland Avenue, Los Angeles, California, all the assets of which business is their community property, is now and all increase or change thereof shall be, their joint property with right of survivorship.

In Witness Whereof we have hereunto affixed our signatures at the City of Los Angeles, California, on the 3rd day of January, 1928.

JAMES A. KAMMERDINER
MYRTLE B. KAMMERDINER

(Testimony of James A. Kammerdiner.)

State of California,
County of Los Angeles—ss.

On this 3rd day of January, 1928, before me, Kimpton Ellis, a Notary Public in and for the said County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared James A. Kammerdiner and Myrtle B. Kammerdiner, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal in said County the day and year in this certificate first above written.

[Seal]

KIMPTON ELLIS

Notary Public in and for said County of Los Angeles, State of California.

[Endorsed]: Filed Dec. 29, 1941.

By Mr. Smith:

Q. The patents which were used in this rotary jar business, in whose name were they issued and did they stand? A. James A. Kammerdiner.

Q. All of them were in your name?

A. Yes.

Q. Were any of them at any time in your wife's name? A. No.

(Testimony of James A. Kammerdiner.)

Q. Did you ever transfer any of them to your wife or assign them to your wife? A. No, sir.

Q. Or to the Kammerdiner Rotary Jar Company, or business? Did you ever assign any of them to anybody else? A. No, sir.

Q. Or to any company or any associate?

A. No, sir.

Q. What was the manner in which you conducted your rotary jar business, particularly in reference to whether you sold jars or whether you rented them, or how was the business handled in relation to your clients?

A. We rented them here in the United States and sold them for foreign shipment.

Q. You had foreign patents, too, I assume?

A. Yes, sir. [25]

Q. In foreign countries? A. Yes.

Q. Your jars were rented here?

A. In the United States.

Q. And that business was conducted by a business known as the Kammerdiner Rotary Jar business? A. Yes, sir.

Q. That is the way it was handled?

A. Yes.

Q. That was not an incorporation in any way?

A. No, sir.

Q. You had no Articles of Association?

A. No, sir.

Q. Drawn up, or anything of that kind?

A. No, sir.

(Testimony of James A. Kammerdiner.)

Q. Was the rentals done in the name of the Kammerdiner Rotary Jar, or done in your name, the rentals of the jars?

A. Well, I couldn't say on that. I was well acquainted in the field and it was just James Kammerdiner there altogether.

The Court: What was the title?

The Witness: How?

The Court: What was the name under which you did business?

The Witness: James Kammerdiner, James A. Kammerdiner.

The Court: You didn't file a certificate? You know [26] what a certificate of doing business under a fictitious name is, don't you, in California?

The Witness: Yes, I have some idea of it.

The Court: Well, if you don't know then, you didn't file one.

Mr. Smith: One was filed, if your Honor please.

The Court: What?

Mr. Smith: One was filed.

The Court: All right.

The Witness: And I think it was advertised, too, at that time.

The Court: All right.

By Mr. Smith:

Q. Mr. Kammerdiner, did you, prior to 1923, ever receive any money other than for your personal services? A. No.

(Testimony of James A. Kammerdiner.)

Q. Did you receive anything by gift or did you inherit any money? A. No.

Q. Nothing except for personal services for what you earned? A. Yes.

Q. What you earned as the result of your wages?

A. I made some investments that I made money on, of course.

Q. But the nucleus of those investments was the money [27] that you had earned by your personal services? A. Yes.

Q. Personal efforts? A. Yes.

Q. By salary or wages or something of that character? A. Yes.

Q. Did Mrs. Kammerdiner ever receive any property other than for her personal services?

Mr. Mitchell: Any what?

Mr. Smith: Any property or money or funds other than for her personal services.

The Witness: No, sir.

By Mr. Smith:

Q. Did she inherit anything that went into the rotary jar business in any way? A. No, sir.

Q. Or nothing by gift that went into the rotary jar business in any way? A. No, sir.

Q. Did you make any gifts of property to Mrs. Kammerdiner that went into the rotary jar business?

A. No, I can't say I did. We were working together. There was no chance of giving then.

Q. During the time that Mrs. Kammerdiner was, as you say, working and made wages, or earned

(Testimony of James A. Kammerdiner.)

money, did you at any time have any agreement with her that those wages or [28] that money should be her separate property or belong separately to her? A. No, sir.

Mr. Mitchell: I object to that question on the ground that it has already been asked and answered.

Mr. Smith: Not as fully as I would like to have it answered.

Mr. Mitchell: The witness testified——

The Court (Interrupting): All right. Let's avoid repetitious statements. He knows what his dealings were with his wife. Let's take them one at a time.

By Mr. Smith:

Q. Your answer was "No"?

A. That is right.

Mr. Smith: I guess that is all.

Cross Examination

By Mr. Mitchell:

Q. Mr. Kammerdiner, on direct examination you did state that the agreement regarding the boarding house and your working in the field—by the way, how many boarders did your wife take care of at that time?

A. Occasionally as many as one hundred sixty.

Q. And she had full charge?

A. Full charge of the buying and management.

Q. And your agreement regarding that and the drill- [29] ing contract, you were under a contract for that drilling job, were you not? A. No.

(Testimony of James A. Kammerdiner.)

Q. What? A. No.

Q. You were paid by the day?

A. By the month.

Q. By the month? A. Yes.

Q. And you stated on direct examination that the agreement regarding that, if I understood you correctly, regarding that boarding house and the drilling in connection with it on the same lease——

A. (Interrupting) Yes.

Q. ——was the same as the agreement of 1923 regarding the jar business?

Mr. Bloom: Just a minute. Mr. Mitchell himself objected to the word “agreement,” and therefore Mr. Kammerdiner couldn’t testify to what the agreement was.

The Court: On cross examination he may ask the question.

Mr. Mitchell: Will you read the question, Mr. Reporter?

Do you remember the question?

The Witness: No, I do not.

Mr. Mitchell: Will you read it, please?

(The question referred to was read by the reporter, [30] as follows:

“Q. And you stated on direct examination that the agreement regarding that, if I understood you correctly, regarding that boarding house and the drilling in connection with it on the same lease was the same as the agreement of 1923 regarding the jar business?”)

(Testimony of James A. Kammerdiner.)

The Witness: I would say so, because all the money I earned out there and all that she earned, we sent in here to the bank at Seventh and Spring Street.

By Mr. Mitchell:

Q. And placed it in a joint account?

A. How?

Q. And placed it in a joint account?

A. Yes.

Q. Go ahead.

A. And in that way, why, I figured it was just about the same as we had went into business in the jar business.

Q. That is, 50-50?

A. Very consistent, I would say.

Q. What is that?

A. I would say that was very much in line as it was when we went into the jar business.

Q. That was a 50-50 split, was it not?

A. Yes.

Q. What year was that, Mr. Kammerdiner?

A. I went out there in 1909, one year after I was [31] married.

Q. How long did that continue?

A. Six years.

Q. Six years that she kept the boarding house, and you handled the drilling in the field on the same lease?

A. Yes.

Q. And the compensation which you received from your services, and the profits made on run-

(Testimony of James A. Kammerdiner.)

ning the boarding house were all kept in a single joint account; is that correct?

A. I wouldn't say they were all kept there. I had an account at Fullerton. We used that as an emergency out there, and that was in my name and we never had very much money out there, just a few hundred dollars, and the rest was always brought in here to the city, the Security National Bank.

Q. Where was this lease?

A. At a little place called Brea.

Q. And that was near what town?

A. It was about four miles north of Fullerton.

Q. And you kept funds in a bank in Fullerton for, you say, just living expenses or emergency?

A. Emergencies, yes.

Q. And everything you saved was put into it?

A. Everything was brought in to Los Angeles.

Q. Brought into the Los Angeles bank?

A. Yes. [32]

Q. Were they both joint accounts?

A. No. That one in Fullerton was in my name.

Q. In your name? A. Yes.

Q. But the one in Los Angeles was in your joint names? A. Yes.

Q. Were you able to find your bank deposit books for that period of time from 1909 and the following six years?

Counsel states that you were unable to find the bank deposit books for that period.

(Testimony of James A. Kammerdiner.)

A. Well, I looked very close and I couldn't find them. They may be in there.

Q. I show you, Mr. Kammerdiner, three deposit books, one showing deposits beginning August 3, 1921, a book issued by the Guaranty Trust and Savings Bank, Term No. 248595, the period begins August 3, 1921 and ends October 9, 1935.

Can you, from memory, tell whether the account that was kept between 1909 and during the following six years, during your work on the lease at Brea, was issued in the same manner as this, "James Kammerdiner, Mrs. James Kammerdiner"?

A. Well, I think that is the way it would be.

Q. That is the joint account you referred to?

A. Yes.

Q. Was it in the Security Bank, the Guaranty Bank, that account that was kept prior to 1915?

A. Yes. It was at Seventh and Spring, the Security [33] Bank, it was; I believe that is the Security, isn't it?

Q. It is now the Security. It used to be the Guaranty on Seventh and Spring.

A. Yes.

The Court: It is still called the Guaranty Office.

Mr. Mitchell: That is right, your Honor. It is now taken over by the National across the street, the First National.

The Court: Yes.

Mr. Mitchell: May that be identified as Defendant's Exhibit A?

(Testimony of James A. Kammerdiner.)

The Court: All right. It may be received in evidence. Is there any objection, Mr. Smith?

Mr. Bloom: We object on the ground it is not the best evidence. The card opening the account from the bank would be the best evidence of how the account read.

The Court: Well, this is just as good as the card.

Mr. Bloom: I believe not, your Honor.

The Court: It is an original entry and it has a joint deposit.

Mr. Bloom: Well, if there is going to be any contention made that the lack of the words "as Joint Tenants, with right of survivorship," on the bank account——

The Court: It isn't lacking; it is here.

Mr. Bloom: Some of these may not have that.

The Court: Well, of course, this one has on it a [34] stamp.

Mr. Bloom: I know some have them and some don't.

The Court: That is a question of argument. That merely means the effect to be given to them.

Mr. Bloom: I assume counsel is going to go along with each of these books and introduce them into evidence.

The Court: He is offering them as going to the entire case, not to a particular point.

Mr. Smith: I think, your Honor, you haven't the purport of counsel's examination. I am fearful

(Testimony of James A. Kammerdiner.)

that counsel will introduce a book here that will show it is in the two names of these parties without any description, namely, showing Joint Tenancy, or with right of survivor. Then counsel in his brief might say it is a Tenancy in Common account.

The Court: I know Mr. Mitchell as well as I know you, probably I know you better because I have known you longer. Didn't you see that stamp there?

Mr. Mitchell: I didn't.

Mr. Smith: He made the mistake right there which indicates very definitely that counsel didn't want to get one of those type of books.

Mr. Mitchell: I have no objection. I want the true facts to come out, Mr. Smith.

The Court: Gentlemen, you know me well enough that regardless of what counsel does or doesn't do, that I don't [35] consider this a game of skill, lawsuits as a game of skill. He has offered this and I am telling you that it has a stamp on it and if he made a mistake he can withdraw it. If he doesn't intend to offer it, I will put it in as my Exhibit.

Mr. Smith: The point we make is this: My colleague here has a bank account that is in Joint Tenancy, and just both their names, he and his wife's names are on the book. That would be all that is necessary, but the kind of account it is in the bank is indicated by the card, the contract that the parties make with the bank.

(Testimony of James A. Kammerdiner.)

The Court: I agree with you.

Mr. Smith: That is the point we are making.

The Court: That is all right.

The Court: The objection will be overruled and the bank account denominated "Term No. 248595 of the Guaranty Trust and Savings Bank," will be received as Government's Exhibit 1.

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 1.")

DEFENDANT'S EXHIBIT No. 1

GUARANTY TRUST & SAVINGS BANK

Los Angeles

Term No. 248595

This Account Is Not Subject to Check

In Term Account with
JAMES KAMMERDINER or
MRS. JAS. KAMMERDINER

Joint owners, subject to the order of either, the balance at the death of either, to belong to the survivor.

Date	Entered		Deposited	Balance
	By	Withdrawn		
Aug 3 '21	M		34.69	34.69
Sep 12 1921	C		25	59.69
Sep 15 1921	C		15	74.69
Sep 21 1921	C		49.50	124.19
Oct 25 1921	C		54.75	178.94
Nov 1 1921	C		15	193.94
Dec 7 1921	T		216	409.94
Dec. 31 '21, Interest (66)			1.98	411.92
Jan 10 '22	C		37.25	449.17
Feb 27 '22	J		21	470.17

(Testimony of James A. Kammerdiner.)

Guaranty Trust & Savings Bank—(Continued)

Date	Entered By	Withdrawn	Deposited	Balance
Mar 13 '22	J		30	500.17
Mar 20 '22	J		25	525.17
Mar 22 '22	T		5	530.17
				530.17
June 30 '22	Interest (67)		10.60	540.77
Aug 1 '22	(Illegible)		20	560.77
Aug 14 '22	J		39.23	600
Nov 14 '22	T		20	620
Dec. 31 '22	Interest (68)		11.72	631.72
Dec 29 1922	J		2.50	634.22
Jun 25 '23	L		62.50	696.72
June 30 '23	Interest (69)		12.68	709.40
Aug 31 '23	M		20	729.40
Nov 2 '23	C		35	764.40
Nov 24 '23	L		79.40	843.80
Dec 3 '23	L		18.35	862.15
Dec 8 '23	(Illegible)		20	882.15
Balance Forward				882.15
Dec. 31-23	Interest (70)		14.49	896.64
Jan 21 '24	N	20	20	876.64 916.64
Feb 1-'24	L		150	1066.64
May 26 '24	N		40	1106.64
Jun 5 '24	N	450		656.64
Jun 24 '24	W		37.50	694.14
June 30 '24	Interest (71)		13.12	707.26
Jul 23 '24	(Illegible)		37.50	744.76
Oct 20 '24	(Illegible)		5.21	749.97
Nov 10 '24	(Illegible)		55.71	805.68
			Balance Forward	805.68
Balance Forward				805.68
Nov 24 '24	(Illegible)		37.50	843.18
Nov 26 1924	(Illegible)		1.25	844.43
Nov 26 1924	(Illegible)		43.39	887.82
Dec. 31 '24	Interest (72)		14.86	902.68
Dec 29 '24	(Illegible)		6.91	909.59
Jan 7 '25	S		17.46	927.05

(Testimony of James A. Kammerdiner.)

Guaranty Trust & Savings Bank—(Continued)

Date	Entered By	Withdrawn	Deposited	Balance
Jan 10 '25	(Illegible)		32.43	959.48
Mar 2 '25	(Illegible)		39	998.48
May 19 1925	(Illegible)		4.68	1003.16
May 1-1925	(Illegible)		15	1018.16
Jun 22 1925	(Illegible)		32.96	1051.12
Jul 28 1925	(Illegible)		118.76	1169.88
			Balance Forward	
Balance Forward				1169.88
June 30 '25 Interest(73)			20.14	1190.02
Aug 24 '25	(Illegible)		97.63	1287.65
Aug 28 1925	(Illegible)		30.91	1318.56
Sep 28 1925	N		44	1362.56
Nov 9 1925	N		57.56	1420.12
Nov 16 1925	N		31.50	1451.62
Dec. 31 '25 Interest(74)			25.09	1476.71
			25.09	1506.71
June 30 '26 Interest (75)			30	1506.71
Jul 26 1926 K K			229	1735.71
Aug 3 1926 K			70	1805.71
			Balance Forward	
Balance Forward				1805.71
Aug 10 1926	(Illegible)		45	1850.71
Sep 10 1926	(Illegible)		25	1875.71
Nov 13 1926	(Illegible)		70	1945.71
Nov 15 1926	(Illegible)		56.06	2001.77
Dec 9 1926	(Illegible)		26.39	2028.16
Dec. 31 '26 Interest (76)			36.24	2064.40
Apr 5 1927	(Illegible)		19.99	2084.39
May 31 1927	(Illegible)		40	2124.39
Oct 7 1927	(Illegible)		68.56	2192.95
June 30 '27 Interest(77)			42.18	2235.13
Nov 21 1927 ES			51.27	2286.40
			Balance Forward	
Balance Forward				2286.40
Nov 25 1927	(Illegible)		9.83	2296.23
Nov 25 1927	(Illegible)		20	2316.23

(Testimony of James A. Kammerdiner.)

Guaranty Trust & Savings Bank—(Continued)

Date	Entered By	Withdrawn	Deposited	Balance
Dec. 31 '27	Interest(78)		44.09	2360.32
Jan 16 1928	(Illegible)		120.90	2481.22
June 30 '28	Interest(79)		48.76	2529.98
Oct 1-'28	S		51.07	2581.05
Dec. 31 '28	Interest(80)		50.58	2631.63
Dec 28 '28	S		2.14	2633.77
June 30, '29	Interest(81)		53.17	2686.94
Aug 15 '29	S		143.79	2830.73
Dec. 31, '29	Interest(82)		55.88	2886.61
Jan 17 '30	S		2.12	2888.73
			Balance Forward	
Balance Forward				2888.73
June 30 '30,	Interest		57.80	2946.53
Dec. 31, '30	Interest		58.92	3005.45
June 30, '31	Interest		57.59	3063.04
Dec. 31, '31	Interest		53.60	3116.64
2-17-32			500	3616.64
2-17-32	Ret	500		3116.64
June 30, '32,	Interest		54.53	3171.17
Dec. 31, 32,	Interest		55.49	3226.66
Feb 15 1933	OR	2500		726.66
Mar 20 1933	OR		590.50	1317.16
June 30, 1933,	Interest			1332.96
Aug 25 '33 (Illegible)	1000			332.96
			Balance Forward	
Balance Forward				332.96
Dec. 31, 1933	Interest		4.98	337.94
June 30, 1934,	Interest		5.05	342.99
Dec. 31, 1934,	Interest		4.70	347.69
Jan 16 '35	(Illegible)		100	447.69
June 30, 1935,	Interest		5.46	453.15
Oct 9-'35 (Illegible)	132	453.15		

Closed.

[Endorsed]: Filed Dec. 29, 1941.

(Testimony of James A. Kammerdiner.)

The Court: We will argue the effect, if any, later on.

Mr. Mitchell: I think, with the Court's and counsel's permission, I would offer them in evidence at this time rather than having them identified and then offering them [36] later.

The Court: All right.

Mr. Mitchell: I would like to get the dates in the record. One issued by the First National Bank, Fullerton, California, which starts November 13, 1924 and ends December 2, 1925, in the name of "Mr. or Mrs. Jas. Kammerdiner."

The Court: All right. That will be received as Government's Exhibit 2.

Mr. Bloom: Might it be understood that our objection——

The Court (Interrupting) Subject to the same objection, which is overruled.

Mr. Bloom: And exception.

The Court: That is no longer necessary.

Mr. Bloom: I thought so, but I wanted to be sure.

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 2.")

(Testimony of James A. Kammerdiner.)

DEFENDANT'S EXHIBIT No. 2

FIRST NATIONAL BANK

Fullerton, California

In account with

MR. or MRS. JAS. KAMMERDINER

Nov. 1	1650—
Nov 13 1924.....	425—
Nov 15 1924.....	800—
Nov 22 1924.....	275—
Dec 17 1924.....	1400—
Dec 19 1924.....	100—
Mar 10 1925.....	50—
Mar 16 1925.....	575—
Mar 25 '25.....	600—
Apr 9 1925.....	1250—
Apr 30 '25.....	2000—
May 15 '25.....	1650—
May 18 1925.....	1350—
Jun 20 1925.....	200
Jul 29 1925.....	800—
Aug 8 '25.....	656.25
Aug 18 1925.....	2050—
Sep 1 1925.....	3300—
Sep 18 1925.....	3550—
Oct 10 1925.....	1797—
Oct 14	4514—
Oct 21 1925.....	4740.40
Oct 27 1925.....	8688.35
Nov 17 1925.....	2312.55
Nov 17 1925.....	4823.15
Dec 1 1925.....	1059—
Dec 2 1925.....	110.13

[Endorsed]: Filed Dec. 29, 1941.

(Testimony of James A. Kammerdiner.)

Mr. Mitchell: The next one is issued by the Citizens National Trust & Savings Bank, successors to Citizens Trust & Savings Bank, in account with "Mr. or Mrs. Jas. Kammerdiner."

The first entry is November 21, 1925, and the last entry is July 26, 1930. That is for Los Angeles, isn't it?

The Witness: Yes, on Western Avenue.

The Court: The Western Avenue branch?

Mr. Bloom: Same objection.

The Court: It will be received as Government's Exhibit 3. [37]

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 3.")

DEFENDANT'S EXHIBIT No. 3

CITIZENS NATIONAL TRUST & SAVINGS BANK

Successors to
Citizens Trust & Savings Bank

In Acct. with

MR. or MRS. JAS. KAMMERDINER

Nov 21 '25	A	2362.50
Dec 3 1925	Z	160.64
Dec 11 '25	A	2131.27
Dec 15 '25	A	6546.90
Dec 17 '25	A	1700—
Dec 19 1925	Z	1621.52
Dec 24 '25	A	2148.17
Dec 31 '25	A	1915—
Jan 5 '26	A	75—
Jan 13 '26	A	(6542.66

(Testimony of James A. Kammerdiner.)

Citizens National Trust & Savings Bank—(Continued)

Jan 13 '26	A	(10
Jan 16 '26	A	1068.27
Feb 3 '26	A	1072.65
Feb 18 '26	A	1202.73
Mar 5 '26	A	662.50
Mar 8 '26	A	448.21
Mar 9 '26	A	925.49
Mar 15 '26	A	489.68
Mar 22 '26	A	500—
Mar 25 1926	Z	1167—
4-13-26	Dup	3213.43
Apr 14 '26	(Illeg.)	1875—
Apr 21 '26	A	275—
May 12 '26	J	300—
May 21 '26	A	862.50
May 26 '26	A	1075—
May 29 '26	A	762.50
Jun 2 '26	J	404.50
Jun 7 '26	A	390—
Jun 22 '26	A	2118.50
Jun 24 '26	A	641—
Jul 2 '26	Z	1000—
Jul 16 1926	C	300—
Jul 17 1926	C	12996.95
Jul 20 1926	C	1367.50
Jul 23 '26	A	206—
Aug 2 '26	Z	400—
Aug 10 '26	Z	823.93
Aug 13 '26	J	332.62
8-21-26	Dup	430—
Aug 25 '26	A	1957.50
Sep 1 1926	Z	1062.94
Sep 7 1926	Z	775—
9-16-26	Dup	1659.62
Sep 20 '26	A	2000—
9-23-26	Dup	59.15
Sep 28 '26	A	1237.50
Oct 15 '26	A	181.28

(Testimony of James A. Kammerdiner.)

Citizens National Trust & Savings Bank—(Continued)

Oct 16 '26	A	15634.93
Oct 26 '26	A	2350—
Nov 4 '26	J	800—
Nov 9 '26	A	5430.68
Nov 19 '26	J	912—
Nov 29 '26	A	2000—
Dec 11 '26	A	53.40
Dec 13 '26	A	1607.26
Dec 16 '26	A	300—
Dec 22 '26	A	1875—
Dec 24 '26	A	1022—
Dec 30 '26	A	8720.22
Jan 12 '27	A	1080.10
Jan 15 '27	A	5471.68
Jan 22 '27	A	1603—
Feb 14 '27	A	1729.90
Feb 15 1927	Z	2000—
Feb 16 1927	Z	3000—
Feb 18 1927	Z	1300—
Mar 15 '27	A	10006.04
Mar 21 '27	A	2864.65
Mar 21 '27	A	2954.55
Mar 26 '27	A	1459—
Mar 31 '27	A	4047.85
Apr 23 '27	A	5000—
Apr 27 '27	A	1250—
Apr 29 '27	A	600—
May 7 1927	Z	650.50
May 14 '27	A	1475—
May 27 '27	A	3587.03
5-16-27	dup	700—
Jun 1 '21	A	818.32
Jun 2 '27	Z	1500—
Jun 4 '27	A	1624.35
Jun 15 '27	A	1044—
6-8-27	dup	1362.50
Jun 17 '27	A	675—
Jun 22 '27	A	2097.54

(Testimony of James A. Kammerdiner.)

Citizens National Trust & Savings Bank—(Continued)

Jun 23 '27	A	1650—
Jun 28 '27	A	2025—
Jul 6 '27	A	10798.01
Jul 8 '27	A	3123.75
Jul 11 '27	(Illeg.)	527.80
Jul 15 '27	(Illeg.)	1100—
Jul 18 '27	(Illeg.)	3546.07
Jul 22 '27	(Illeg.)	2991.24
Jul 27 '27	(Illeg.)	5173.88
Jul 30 '27	A	600—
Aug 27 '27	Z	2067.95
8-2-27	Dup	750—
8-20-27	Dup	300—
Sep 13 '27	A	2600.70
Sep 16 '27	A	2180.75
9-20-27	dup	152.63
9-20-27	dup	305.25
Sep 22 '27	A	400—
Oct 1 '27	A	950—
Oct 8 '27	A	1600—
Oct 11 '27	A	677.80
Oct 18 '27	A	2782.70
Oct 25 '27	A	2762.50
Nov 12 '27	A	700—
Nov 19 '27	A	4200—
Nov 22 '27	A	4232.66
Nov 29 '27	A	1100—
Dec 12 '27	A	3734—
Dec 23 '27	A	4035.50
Jan 11 '28	A	3682.20
Jan 20 '28	A	1600—
Jan 24 '28	Z	3936.85
Feb 20 '28	A	310—
2-8-28	Dup	2375—
Feb 27 '28	A	1000—
Mar 2 '28	A	750—
12-29-27	Dup	1350—
Mar 7 '28	A	1875—

(Testimony of James A. Kammerdiner.)

Citizens National Trust & Savings Bank—(Continued)

Mar 7 '28	A	2000—
Mar 15 '28	A	4967.09
Mar 23 '28	A	1063—
Apr 7 '28	A	400—
Apr 12 '28	(Illeg.)	3450—
Apr 16 1928	A	1125—
3-19-28	Dup	1975—
Apr 19 1928	A	4532.10
Apr 27 '28	A	3901.95
May 3 '28	A	3800—
May 7 '28	A	1541.05
May 18 '28	A	1293.50
5-15-28	Dup	1804—
May 22 '28	A	6247.50
Jun 14 '28	Z	1544—
Jun 15 1928	A	1862.35
Jun 19 '28	J	426.75
Jun 21 '28	J	650—
Jun 30 '28	A	4850—
Jul 3 1928	A	6000—
Jul 7 '28	(Illeg.)	500—
Jul 9 '28	(Illeg.)	2748.90
7-12-28	Dup	450—
Jul 14 '28	(Illeg.)	2294—
Aug 6 '28	(Illeg.)	1100—
Aug 10 '28	(Illeg.)	668.50
Aug 29 '28	Z	2550—
Sep 15 '28	Z	3020.83
Sep 19 '28	Z	1251—
Sep 26 '29	Z	3450—
10-4-28	Dup	6294.10
Oct 6 '28	Z	600—
Oct 11 '28	Z	9373.65
Oct 16 '28	Z	2831.92
Oct 18 '28	Z	984.71
Oct 23 '28	Z	9446.90
Oct 25 '28	Z	1150—
Oct 26 '28	Z	5450—

(Testimony of James A. Kammerdiner.)

Citizens National Trust & Savings Bank—(Continued)

Oct 29 '28	Z	150—
Nov 5 '28	Z	2030.20
Nov 9-1928	Z	401.07
Nov 20 '28	Z	4037.33
Dec 11 '28	P	2150.50
Dec 13 '28	P	1750—
Dec 17 '28	Z	1100—
12-31-28	Dup	4622.40
Jan 2 '29	Z	2072.88
Jan 19 '29	(Illeg.)	4290.65
Feb 2 '29	(Illeg.)	750—
Feb 13 1929	R	4000—
Feb 18 '29	(Illeg.)	500—
Mar 8 '29	(Illeg.)	2550—
Mar 21 '29	(Illeg.)	2774.40
3-4-29	Dup	1268.72
Mar 27 1929	(Illeg.)	6350—
Apr 9 '29	(Illeg.)	1379.35
4-9-29	Dup	300—
Apr 15 '29	(Illeg.)	3383.26
Apr 19 '29	(Illeg.)	726.65
Apr 22 '29	D	2300—
Apr 25 '29	M	4086.84
Apr 30 '29	M	1300—
May 13 '29	(Illeg.)	446—
4-26-29	Dup	300—
May 16 '29	M	3267.50
May 18 '29	I	523.08
May 20 '29	I	800—
May 27 1929	M	2200—
May 29 '29	I	1042.92
Jun 12 '29	I	6715.55
Jun 17 '29	I	2250—
Jul 19 1929	B	2504.73
Jul 24 '29	B	950—
Jul 24 '29	(Illeg.)	800—
Jul 31 '29	B	1350—
Aug 1 '29	B	150—

(Testimony of James A. Kammerdiner.)

Citizens National Trust & Savings Bank—(Continued)

Aug 3 '29	B	2500—
Aug 9 '29	(Illeg.)	525—
Aug 10 '29	(Illeg.)	1950—
Aug 12 '29	B	20000—
Aug 13 '29	(Illeg.)	2450—
6-22-29	Dup	2350—
7-15-20	Dup	4000—
Aug 19 '29	B	1039.34
Aug 30 1929	(Illeg.)	2400—
Sep 17 1929	(Illeg.)	1236.48
7-1-29	Dup	750—
7-11-29	Dup	900—
10-10-29	Dup	1350—
10-16-29	Dup	3404.97
Oct 19 1929	(Illeg.)	1000—
Nov 1 '29	L	1400—
Nov 13 1929	F	2496—
Nov 15 1929	I	1500—
Nov 19 '29	W	1363.50
Nov 21 1929	I	1400—
Nov 27 1929	I	1350—
Dec 9 1929	I	1050—
9-30-29	Dup	2710—
12-5-29	Dup	800
Dec 13 1929	I	3325
Dec 14 1929	I	1725
Dec 31 1929	I	650
17	Dup	1260—
18	Dup	350—
Dec 20	Dup	1437.75
Jan 3 1930	W	1395—
Jan 6 1930	I	3000—
Jan 22 1930	I	300
Jan 23 1930	I	1450
Jan 24 '30	Z	724.41
Feb 14 1930	I	1467.36
Feb 28 1930	I	389.88
Mar 10 '30	I	600

(Testimony of James A. Kammerdiner.)

Citizens National Trust & Savings Bank—(Continued)

Mar 13 '30	I	550
Mar 19 '30	I	800
Mar 21 '30	I	800—
Mar 28 '30	W	1650—
Apr 7 '30	I	600—
Apr 1 '30	I	1725
Apr 21 '30	I	2900—
Apr 24 '30	I	2425—
Apr 25 '30	I	1865.36
May 12 '30	I	2082.17
May 27 '30	I	540
Jun 21 '30	I	1600—
Jun 24 '30	I	3220
Jun 25 '30	I	800—
Jun 28 '30	I	1300
Jul 3 '30	I	818.75
Jul 8 '30	I	1000
Jul 12 '30	I	700—
Jul 16 '30	I	3484.15
Jul 19 '30	I	1500
Jul 22 '30	I	3534.12
Jul 24 '30	I	1850.50
Jul 26 '30	I	400

[Endorsed]: Filed Dec. 29, 1941.

Mr. Mitchell: The next one is issued by Bank of Italy National Trust & Savings Association, Fullerton Branch, Fullerton, California, Savings Account No. 5551, issued to "Jas. Kammerdiner or Mrs."

The first entry is August 16, 1929, and the last entry is September 21, 1931.

(Testimony of James A. Kammerdiner.)

Was that a savings or checking account, Mr. Kammerdiner?

Mr. Bloom: Objected to. The book speaks for itself. It says a savings account.

Mr. Mitchell: The witness would know what the account was. Perhaps the book shows.

Mr. Bloom: It says "Savings Account."

The Court: That is savings account No. 207.

Mr. Mitchell: That is offered as Defendant's Exhibit next.

The Court: It may be received as Exhibit 4, subject to the same objection which is overruled.

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 4.")

DEFENDANT'S EXHIBIT No. 4

Fullerton Branch

BANK OF ITALY

National Trust & Savings Association

Savgs. Acct. No. 5551

JAS. KAMMERDINER or MRS.

Date	Teller	Withdrawn	Deposited	Balance
Aug 16 1929			1376.39	1376.39
Sept 3 1929	L		691.62	2062.01*
10-29-29	L		199.75	2267.76
10-29-29	L		249.75	2517.51*
Dividend 51, Dec 31, 1929			27.56	2245.07
2-21-30	S		179.97	2785.04*
Jun 18 1930		2500—		225.04

(Testimony of James A. Kammerdiner.)

Bank of Italy—(Continued)

Date	Teller	Withdrawn	Deposited	Balance
Dividend 52,				
June 30, 1930			53.30	278.34
6/10/30—Dupl.			599.75	878.09
Aug 21/30—Dupl			147.22	1025.31
Aug 2 1930—For'd				1025.31
Aug 29/30—Dupl			399.75	1425.06*
Aug 30/30—Dupl			349.15	1774.81
Sept 15/30—Dupl			199.75	1974.56*
Div. 53,				
Dec. 31, '30			29.51	2004.07
Dec 20 1930		2000—		4.07
2-27-31 Dup	J		99.89	103.96
Div. 53,				
Dec. 31, 1930			1.07	105.03
8-21-31				97.75
Sep 21 1931		202.78		202.78

*[Printer's Note]: Illegible because of perforations through figures.

[Endorsed]: Filed Dec. 29, 1941.

Mr. Mitchell: The defendant will offer also a similar book entitled "Head office, Merchants National Trust and Savings Bank of Los Angeles, Sixth and Spring Streets, in special ordinary account with Jas. or Mrs. Kammerdiner or the survivor of either of them."

The first entry is January 7th, 1927, and the last [38] entry June 22nd, 1928.

The Court: It may be received as No. 5.

(Testimony of James A. Kammerdiner.)

Mr. Bloom: Same objection.

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 5.")

DEFENDANT'S EXHIBIT No. 5

Head Office

MERCHANTS NATIONAL TRUST AND SAVINGS BANK
OF LOS ANGELES

Sixth and Spring Streets
Los Angeles

In Special Ordinary Account With
JAS. or MRS. JAS. KAMMERDIMER

or the survivor of either of them

January 7 1927	C	500—
Feb 7 1927	J	3447.38
1-26 Dup		250—
Mar 12 1927	J	1500—
Mar 19 1927	J	2500—
Oct 15 Dup		250—
Sept 1 Dup		347—
30 Dup		1000—
Dec 10 '27	McCarty	3269.74
Aug 19-27 Dup		1000—
Nov 28-27 Dup		3640.50
Dec 15 '27	McCarty	8358.10
Mar 22 '29	Paepke	800—
Mar 26 '28	McCarty	2175—
May 11 '28	McCarty	1335.25
July 14 Dup		150—
Jul 23 '28	McCarty	910.40
June 22 Dup		1700—

[Endorsed]: Filed Dec. 29, 1941.

(Testimony of James A. Kammerdiner.)

Mr. Mitchell: The next one is issued by the Security Trust & Savings Bank, Commercial Account, Western and Beverly Branch. The number of the account is 765, issued to "Jas. Kammerdiner or Mrs. Jas. Kammerdiner."

The first entry is January 23, 1926, and the last entry August 19th, 1926.

The Court: It may be received.

Mr. Bloom: Same objection.

The Court: The objection is overruled.

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 6.")

DEFENDANT'S EXHIBIT No. 6

SECURITY TRUST & SAVINGS BANK

No. 765

Commercial Account with

JAS. KAMMERDINER or MRS. JAS. KAMMERDINER

This Account Does Not Bear Interest

Jan 23 '26	(Illegible)	15,875.77
Feb 24 '26	J	5,582.99
Feb 25 '26	CD	947—
Mar 15 '26	Vehrs. Retd.	11,780.82
May 1 '26	J	150—
May 3 '26	J	1,601.61
Jun 9 '26	(Illegible)	525—
Jul 14 '26	ET	299.80
Jul 15 '26	ET	550.00
Aug 18 '26	(Illegible)	(Illegible)

[Endorsed]: Filed Dec. 29, 1941.

(Testimony of James A. Kammerdiner.)

Mr. Mitchell: The next deposit book is issued by the Citizens Trust & Savings Bank, Western Avenue Branch, Los Angeles, California, Term Account No. 3667, issued to "Mrs. Jas. Kammerdiner James Kammerdiner." Just the two names, nothing between the names.

The Court: Seven.

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 7.")

DEFENDANT'S EXHIBIT No. 7

Always Bring This Book With You

CITIZENS TRUST & SAVINGS BANK

Book No. 2

Term No. 3667

This Account Is Not Subject to Check

In Term Account With

MRS. JAS. KAMMERDINER

JAMES KAMMERDINER

No payments will be made except upon
presentation of this book

Date	Withdrawn	Deposits	Balance
Apr 24 '28	Brought Fwd		23,607.07
Apr 30 '28	*	550—	24,157.07
May 4 '28	*	192.51	24,349.58
May 9 '28	*	245—	24,594.58
May 12 '28	*	72.10	24,666.68
May 23 '28	*	35.43	24,702.11
Jun 1 '28	*	250—	24,952.11
Jun 6 '28	*	390—	25,342.11
Jun 9 '28	*	752.60	26,094.71
Jun 19 '28	*	26—	26,120.71

(Testimony of James A. Kammerdiner.)

Citizens Trust & Savings Bank—Book No. 2—(Continued)

Date	Withdrawn	Deposits	Balance
Jul 2 '28	*	150—	26,270.71
Interest to July 1, 1928		429.31	26,700.02
Jul 20 1928	*	306.07	27,006.09
Jul 30 '28	*	400—	27,406.09
Sep 15 '28	*	110—	27,516.09
Sep 19 '28	*	200—	27,716.09
Sep 26 '28	*	616.21	28,332.30
Oct 4 '28	*	24.75	28,357.05
Nov 5 '28	*	133.51	28,490.56
Nov 13 '28	* x	990.64	29,481.20
Jan 3 1929	*	6.25	29,487.47
Interest to Jan. 1, 1929		550.57	30,038.04
Jan 7 '29	*	462	30,500.04
Jan 22 '29	*	1,182.50	31,682.54
Jan 26 '29	*	750—	32,432.54
Feb 8 '29	*	40—	32,472.54
Feb 18 '29	*	153.59	32,626.13
Mar 8 '29	* Compared	40—	32,666.11
Apr 5 '29	*	320.35	32,986.46
Apr 8 '29	*	200—	33,186.46
Apr 14 '29	*	225	33,411.46
Apr 19 '29	*	38.93	33,450.39
May 1 '29	*	600	34,050.39
May 7 '29	*	87.50	34,137.89
May 20 '29	*	1,053.35	35,191.24
May 27 1929	M	700—	35,891.24
May 29 '29	I	100—	35,991.24
Jun 13 '29	I	41.50	36,032.74
Jun 17 '29	I	450—	36,482.74
Jul 6 '29	I	400	36,882.74
Interest to July 1, 1929		657.78	37,540.52
Jul 6 '29	I	37.50	37,578.02
Aug 9 '29	I	249.50	37,827.52
Aug 12 '29	B 20,000—		17,827.52
Aug 13 '29	W	228.75	18,056.27
Aug 27 1929	I	174	18,230.27
Sep 12 '29	W	137.50	18,367.77

(Testimony of James A. Kammerdiner.)

Citizens Trust & Savings Bank—Book No. 2—(Continued)

Date		Withdrawn	Deposits	Balance
Sep 30 1929	*		198.66	18,566.43
Sep 30 '29	W		237.50	18,803.93
Oct 10 1929	I		41.50	18,845.43
Oct 19 1929	I		1,350—	20,195.43
Nov 1 '29	L		82.33	20,277.76
Nov 7 1929	T		37.50	20,315.26
Dec 3 '29	L		24—	20,339.26
Dec 5 '29	*		240.55	20,579.81
Jan 6 1939	I		37.50	20,617.31
Interest Jan. 1, 1930	Compared		356.54	20,973.85
Jan 17 1930	I		1,775	22,748.85
Feb 4, 1930	I		437.50	23,186.35
Feb 20 1930	I		501.35	23,687.70
Mar 5 '30	*		337.50	24,025.20
Mar 10 '30	I		175	24,200.20
Mar 21 '30	I		800	25,000.20
Mar 28 '30	W		323.34	25,323.54
Apr 3 '30	I		337.50	25,661.04
Apr 7 '30	I		500	26,161.04
May 2 '30	I		587.50	26,748.54
Jun 3 '30	A		470—	27,218.54
Jun 18 '30	F	10,000—		17,218.54
Jun 18 '30	I	5,000		12,218.54
Interest to July 1, 1930			261.70	12,480.24
Nov 19 '30	I		18.75	12,498.99
Interest Jan 1, 1937	Compared		249.70	12,748.69
Feb 3 '31	K		37.50	12,786.19
Interest July 1, 1931	Compared		244.78	13,030.97
Jul 8 '31	O		1.00	13,031.97
Jul 9 '31	*	13,030.97		1.00

*[Printer's Note]: Tellers' initials in this book illegible and omitted.

[Endorsed]: Filed Dec. 29, 1941.

(Testimony of James A. Kammerdiner.)

Mr. Mitchell: The first entry is April 24th, 1928 and the last entry is July 9th, 1931. [39]

Mr. Bloom: Same objection.

The Court: It will be received as 7.

Mr. Mitchell: The next one is issued by the Security Office of the Security-First National Bank of Los Angeles, Account No. S 501166, in account with "Myrtle B. Kammerdiner or Jas. Kammerdiner," and stamped "Payable to either or the survivor of them." It is a special savings account.

The Court: All right. It may be received as 8, subject to the same objection which is overruled.

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 8.")

DEFENDANT'S EXHIBIT No. 8

Security Office

SECURITY-FIRST NATIONAL BANK OF LOS ANGELES
Los Angeles

No. S501166

Special Savings Account with

MYRTLE B. KAMMERDINER or JAS. KAMMERDINER

Payable to Either or the Survivor of Them

Subject to the By-Laws Governing
Special Savings Accounts

Jul 7 '31	(Illegible)	14,861.34
July 30	Int.	3.80
Aug 29	Int.	30.95
Sept. 29	Int.	31.01
Oct. 30	Int.	31.08

(Testimony of James A. Kammerdiner.)

Security-First National Bank of Los Angeles—(Continued)

Nov. 28	Int.	31.14
Dec. 30	Int.	31.20
Jan. 29	Int.	29.20
Feb. 27	Int.	28.22
Mar. 30	Int.	28.28
Apr. 29	Int.	25.11
May 28	Int.	11.41
June 29	Int.	11.43
July 29	Int.	11.45
Aug 29	Int.	11.48
Sept. 29	Int.	11.50
Oct. 29	Int.	11.53
Nov. 29	Int.	11.55
Dec. 30	Int.	11.57
Mar 17 '33	(Illegible)	10,650—
Mar 20 '33	CP	12,030.00
Mar 23 '33	(Illegible)	4,070.00

[Endorsed]: Filed Dec. 29, 1941.

Mr. Mitchell: The next book is issued by the Fullerton Branch of the Bank of America, stamped over "Farmers & Merchants National Bank, Fullerton, California." It reads "In Account with Jas. Kammerdiner."

The first entry is May 15th, '25, and the last entry is November 17th, '25.

Mr. Bloom: Same objection.

By Mr. Mitchell:

Q. Mr. Kammerdiner, is that the same account to which you referred as being carried in your name, the account for your living expenses or

(Testimony of James A. Kammerdiner.)

emergency, as you stated, the account you kept in Fullerton?

A. I believe I had more money than that there. Haven't you got another book there?

Q. No other that far back. [40]

A. What is that date?

Q. That is 1925.

A. What is the first date on that?

Mr. Bloom: 1925?

Mr. Mitchell: May, 1925.

The Witness: We got one that should be earlier than that.

By Mr. Mitchell:

Q. This is in your name only?

A. Yes, but there ought to be one earlier.

The Court: Maybe the Government is holding out some of your check books.

Mr. Mitchell: These books were just handed me by Mr. Bloom. I haven't seen them before.

The Court: It may be received.

Mr. Mitchell: It is offered for what it is worth.

The Witness: I had more money in it than——

The Court (Interrupting): All right. Whatever you had, it is your account anyway.

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 9.")

(Testimony of James A. Kammerdiner.)

DEFENDANT'S EXHIBIT No. 9

FULLERTON OFFICE—BANK OF AMERICA

Farmers & Merchants National Bank
Fullerton, California

10351

In Account With

JAS. KAMMERDINER

My 15 '25	R.C.R.	7,477.40
May 18 '25	Taylor	1,288.05
My 29 '25	R.C.R.	1,750.00
Jun 12 '25	P	1,350—
Ju 16 '25	R.C.R.	1,350—
Ju 17 '25	R.C.R.	1,827.70
Jun 20 '25	P	1,144.93
Jun 26 '25	P	1,241.92
Jul 6 1925		1,000
Jul 7 '25	P	1,375.60
Jul 16 '25	P	604.50
Jul 16 '25	P	4,129.03
Jul 24 '25	P	2,400—
Aug 25 '25	S	750—
Aug 25 '25	S	1,850—
Oct 3 '25	S	1,300—
Nov 17 '25	P	1,330.02

[Endorsed]: Filed Dec. 29, 1941.

Mr. Mitchell: The next book is issued by the Western and Beverly Branch of the Security-First National Bank of Los Angeles. The number is 65619. "Term Savings Account with Jas. A. Kammerdiner or Myrtle B. Kammerdiner."

(Testimony of James A. Kammerdiner.)

The first entry is April 26, 1934 and the last is [41] September 17, 1935.

The Court: All right.

Mr. Bloom: Same objection.

The Court: It may be received.

The Clerk: Ten.

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 10.")

DEFENDANT'S EXHIBIT No. 10

Western & Beverly Branch

SECURITY-FIRST NATIONAL BANK OF LOS ANGELES
Los Angeles

No. 65619

Term Savings Account with

JAS. A. KAMMERDINER or MYRTLE B. KAMMERDINER

This account is not subject to check

Date	Entered by	Withdrawn	Deposited	Balance
Apr 26 '34	*		1,808.91	1,808.91
Aug 1 '34	*		527.71	2,336.62
Aug 27 '34	*	#	100.80	2,437.42
9-6-34	*		544.01	2,981.42
Sep 17 '34	*		1,285.65	4,267.07
Sep 21 '34	*		133.23	4,400.30
10-11-34	Lea		67.20	4,467.50
Oct 18 '34	*		150—	4,617.50
11-14-34	*		67.06	4,684.56
Jan 2 '35	#Deposit should be			
		101.80	1—	4,685.56
Dec. 31, 1934, Interest			56.10	4,741.66
1-2-35	*		66.80	4,808.46
1-9-35	*		66.80	4,875.26

(Testimony of James A. Kammerdiner.)

Security-First National Bank of Los Angeles—(Continued)

Date	Entered by	Withdrawn	Deposited	Balance
Fwd.				4,875.26
Jan 19 '35	*		1,065.83	5,941.09
Feb. 14 '35	*		155.37	6,096.46
2-11-35	*		66.17	6,162.63
Feb 26 '35	*		650—	6,812.63
6-30-35	Int.		82.22	6,894.85
To adj. extension	9-6-34			6,894.86
3-7-35	*		65.89	6,960.75
Sep 17 '35	*	6,960.75		

*[Printer's Note]: Tellers' initials in this book illegible and omitted.

[Endorsed]: Filed Dec. 29, 1941.

Mr. Mitchell The next is issued by the Guaranty Office of the Security-First National Bank of Los Angeles, Number 288844—"Commercial Account with Jas. Kammerdiner."

The first entry is March 17, 1933, \$20,000.00; the last entry is August 14th, 1933, \$12.45.

That is offered as the next Exhibit.

Mr. Bloom: Same objection.

The Court: That will be Government's 11.

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 11.")

(Testimony of James A. Kammerdiner.)

DEFENDANT'S EXHIBIT No. 11

Guaranty Office

SECURITY-FIRST NATIONAL BANK OF LOS ANGELES

Los Angeles

No. 288844

Commercial Account with

JAS. KAMMERDINER

This Account Does Not Bear Interest

Mar 17 '33	(Illegible)	20,000—
Aug 14 1933	(Illegible)	1,200—
Aug 14 1933	(Illegible)	12.45
Oct 5 '35	(Illegible)	10,539.86
Oct 7 '35	(Illegible)	8,000

out.

[Endorsed]: Filed Dec. 29, 1941.

By Mr. Mitchell:

Q. Mr. Kammerdiner, in which of these accounts were [42] the receipts from the rotary jar business placed? Can you identify them, please?

A. I don't know if I would be able to do that. You know this banking business——

The Court (Interrupting): Speak louder. There is no secret. You can't whisper.

The Witness: My voice is not too strong.

The Court: That is all right. I will sit right here. It doesn't make any difference.

The Witness: The banking business, a good part of it, was done by my wife. She did the office work.

(Testimony of James A. Kammerdiner.)

By Mr. Mitchell:

Q. And handled the finances?

A. Mostly. I never did have a bit of schooling in my life. I never went to school a straight week in my whole life. I never was in a high school and never was on a college grounds.

Q. But your wife was educated?

A. My wife had some education. She worked in an office here in the city.

Q. As a stenographer, before you were married?

A. Yes. And the bookkeeping work and things that did need office work, I wasn't close to that.

Q. Was that true during the time that the boarding house was run, also?

A. Well, it had to be true during that time. [43]

Q. Just the same as during the rotary jar business?

A. Yes.

Q. But you can't tell exactly which of these accounts——

A. (Interrupting): I can tell some of them. I ought to be able to tell from the size of them.

Q. You are now looking at a term account, which is marked Defendant's Exhibit 1, covering the period from August, 1921, to October, 1935. Does the date help you any?

A. Yes, sir, it would.

Q. Between '21 and '35?

A. Yes. I imagine a good part of that was jar business.

Q. Yes.

(Testimony of James A. Kammerdiner.)

A. Now, I think practically all of this was jar business.

Q. Now, let's see.

You now have Defendant's Exhibit No. 3, one on the Citizens Bank, commencing in November, '25 and ending July, '30, the Citizens Trust & Savings Bank.

A. And I think part of this is jar business.

Q. Now, this one is Defendant's Exhibit No. 4, Bank of Italy, Fullerton Branch, Savings Account, from August 16, '29 to September, '31.

A. Part of this and along in there was jar business. (Indicating).

Q. This is Defendant's Exhibit No. 2, also a joint [44] account, First National Bank, Fullerton, California. I don't know whether it is savings or not. It doesn't indicate whether it is. It starts November, '24 and ends December, '25.

A. This is jar business.

Q. How about this one, Exhibit 6, Western Avenue?
A. That is jar business.

Q. That is jar business? A. Yes.

Q. This is Exhibit 6, Security Trust & Savings Bank, Western and Beverly Branch, and begins January, '26 and ends August, '26, also a joint account: "Mr. James Kammerdiner, or Mrs. James Kammerdiner."

What did you say about this?

A. I wouldn't say much about that. I don't know.

(Testimony of James A. Kammerdiner.)

Q. It is Defendant's Exhibit No. 5. You don't recall about that one?

A. No, sir. This, I think, is mostly jar business.

Q. Referring to Defendant's Exhibit 7, "Mrs. Jas. Kammerdiner and Jas. Kammerdiner."

Referring to Exhibit No. 8, now.

A. Is that " '33" or " '38"?

Q. That is " '33". [45]

A. That is jar business, too. I think it is mostly all jar business.

Q. That was referring to Exhibit No. 8, "Myrtle B. Kammerdiner or Jas. Kammerdiner."

A. We had other income that might have been throwed in here, but the majority of it is jar business.

Q. Jar business receipts? A. Yes.

Q. You are now looking at Exhibit 9, Defendant's 9, in your name only? A. Yes.

Q. Did any jar business receipts go into that account?

A. I don't believe so. That is when I worked over on the lease.

And this is jar business, too.

Q. Referring to Exhibit 10, "Jas. A. Kammerdiner or Myrtle B. Kammerdiner."

A. This one, I don't know about either.

Q. Referring to Exhibit 11, "Jas. Kammerdiner," only.

Now, Mr. Kammerdiner, I think you testified on

(Testimony of James A. Kammerdiner.)

direct examination that it is hard to tell the value of your patent when you first invented it?

A. Yes.

Q. The basic patent? A. Yes.

Q. That was in 1922 that it was invented and then it [46] was patented in '23; is that correct?

A. Yes, sir.

Q. How soon after that was its value established?

A. Well, I would say very soon after that.

Q. As soon as receipts and profits started coming in? A. Yes.

Q. Was that about '23 or '24?

A. I believe it was close, the first of '24.

Q. The beginning of 1924? A. Yes, sir.

Q. And, Mr. Kammerdiner, did you make investments, you and your wife, with these profits from the rotary jar business? Did you purchase real estate or stocks or bonds or other property?

A. Yes.

Mr. Mitchell: With counsels' and the Court's permission, I might offer the certified copy of the Estate Tax Return in evidence at this time, out of order, because I do want to cross examine the witness.

The Court: All right. It may be received as Government's Exhibit 12.

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 12.")

(Testimony of James A. Kammerdiner.)

DEFENDANT'S EXHIBIT No. 12

[Page 3]

GROSS ESTATE
Schedule A
Real Estate

Instructions

Real estate, improved or unimproved, should be so described and identified that upon investigation by an Internal Revenue officer, it may be readily located for inspection and valuation. For each parcel of real estate there should be given the area and, if the parcel is improved, a short statement of the character of the improvements. For location, such details as the following may be necessary:

City or Town Property.—Street and number, ward, subdivision, block, and lot, etc.

Rural Property.—Township, range, block and lot, street, landmarks, etc.

If any item of real estate is subject to mortgage, the unpaid balance of the mortgage should be shown below under "Description." The full value of the property and not the equity must be extended in the value column. The mortgage should be deducted under Schedule J of this return.

Real property which the decedent has contracted to purchase should be listed in this schedule. The full value of the property and not the equity must be extended in the value column. The unpaid portion of the purchase price should be deducted under Schedule I of this return.

The value of dower, curtesy, or a statutory estate created in lieu thereof, is taxable, and no reduction on account thereof or on account of homestead or other exemption should be made in returning the value of the real estate.

All rents accrued and unpaid should be apportioned to the date of death, whether due at that time or not.

For further instructions see article 2 and articles 10 to 13, inclusive, Regulations No. 80.

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Did the decedent, at the time of death, own any real estate? (Answer "Yes" or "No.")—No.

Item No.	Description	Assessed value for year of decedent's death	Fair market value at date of decedent's death	Rents accrued to date of death
		\$	\$	\$
	None (See Sched- ule "D-1")			
	Totals.....	\$	\$	\$

Grand Total (also enter under the
Recapitulation, Schedule L).....\$ 00

(If more space is needed, insert additional sheets of
same size)

Estate of Myrtle B. Kammerdiner

Date of death April 4, 1935

A

[Page 8]

SCHEDULE D-1 Jointly Owned Property

Instructions

All property of whatever kind or character, whether real estate, personal property, bank accounts, etc., in which the decedent held at the time of his death an interest either as a joint tenant or as a tenant by the entirety, must be returned under this schedule.

The full value of the property must be included in the fourth column, unless it can be shown that a part of the property originally belonged to the other tenant or tenants and was never received or acquired by the other tenant or tenants from the decedent for less than an adequate and full consideration in money or money's worth.

Where it is shown that the property or any part thereof, or any part of the consideration with which the

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Schedule "D-1"—(Continued)

property was purchased, was acquired by the other tenant or tenants from the decedent for less than an adequate and full consideration in money or money's worth, there should be omitted from this schedule only so much of the value of the property as is proportionate to the consideration furnished by such other tenant or tenants.

Where the property was acquired by gift, bequest, devise, or inheritance by the decedent and spouse as tenants by the entirety, then only one-half of the value of the property should be listed on this schedule. Where the property was acquired by the decedent and another person or persons by gift, bequest, devise, or inheritance as joint tenants, and their interests are not otherwise specified or fixed by law, then there should be entered on this schedule only such fractional part of the value of the property as is obtained by dividing the full value of the property by the number of joint tenants.

If the executor contends that less than the value of the entire property is includable in the gross estate for purposes of the tax, the burden is upon him to show his right to include such lesser value, and in such case he should make proof of the extent, origin, and nature of the decedent's interest and the interest of decedent's cotenant or cotenants.

If the property consists of real estate, the assessed value thereof for the year of death should be shown in the second column, headed "Description of property." In the third column should be entered the fair market value of the whole property, even though only a fractional part thereof is returnable in column 4. In the fourth column should be entered the amount to be included in the gross estate pursuant to the instructions given above. In the fifth column should be entered the rents, interest, and other income accrued to the date of decedent's death in the same proportion as the amount entered in column 4 bears to the amount entered in column 3.

Property in which the decedent held an interest as a

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Schedule "D-1"—(Continued)

tenant in common should not be listed here, but the value of his interest therein should be returned under Schedule A, if real estate, or if personal property, under the appropriate schedule. The value of the decedent's interest in partnerships should not be included here, but under Schedule D-2 on the following page, designated as "Other Miscellaneous Property."

For further instructions, see articles 22 and 23, Regulations No. 80.

Item No.	Description of property	Fair market value of the property at date of decedent's death	Amount to be included in gross estate	Rents and other income accrued to date of death
		\$	\$	\$
	Totals.....		\$	\$

Grand Total (also enter under the Recapitulation, Schedule L).....\$

(If more space is needed, insert additional sheets of same size)

Estate of Byrtle B. Kammerdiner
Date of death—April 4, 1935.
D-1

SCHEDULE "D-1"
Jointly Owned Property

Item No.	Description of property	Fair market value of the property at date of decedent's death	Amount to be included in gross estate	Rents and other income accrued to date of death
----------	-------------------------	---	---------------------------------------	---

Real Estate: (Los Angeles County)

- 1. That portion of Lot Three (3) of the South Gardena Tract, as per map recorded in Book 43, page 39 of

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Schedule "D-1"—(Continued)

Item No.	Description of property	Fair market value of the property at date of decedent's death	Amount to be included in gross estate	Rents and other income accrued to date death
-------------	-------------------------	--	--	---

Real Estate: (Los Ang. Co.)—(Cont'd.)

Miscellaneous Records in the office of the Recorder of said County described as follows:

Beginning at the Northwest corner of said Lot Three (3); thence North $88^{\circ} 06'$ East on the Northernly line of said Lot Three (3), Eight Hundred Seventeen and seventy hundredths (817.70) feet to the Northeast corner of said Lot Three (3); thence South, on the East line of said Lot Three (3), One Hundred Twenty - eight (128.00) feet; thence South $87^{\circ} 59'$ West, Eight Hundred Fourteen and five hundredths (814.05) feet, to the Westerly line of said Lot Three (3); thence North $1^{\circ} 37'$ West, on said Westerly line of Lot Three (3), One Hundred Twenty-nine and sixty-five hundredths (129.65) feet to the point of beginning. Above named Northwest corner being on the East-

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Schedule "D-1"—(Continued)

Item No.	Description of property	Fair market value of the property at date of decedent's death	Amount to be included in gross estate	Rents and other income accrued to date death
Real Estate: (Los Ang. Co.)—(Cont'd.)				
	erly line of Main Street (60 feet wide). Subject to Right of way for constructing and main- taining electric line con- sisting of poles, cross arms and other appliances, to be set one foot west of East property line, in favor of Southern California Edi- son Company, a corpora- tion, Los Angeles, California. This property has been registered under the Tor- rens title and is covered by certificate No. CC-27772, issued in the name of James A. Kammerdiner and Myrtle B. Kammer- diner as joint tenants.....\$	1,920.00	\$	960.00
2.	An undivided one-third ($\frac{1}{3}$) interest in and to: Lot Twenty-five (25), ex- cept the North Forty-nine (49) feet thereof, and also the North Forty-one and 05/100 (41.05) feet of lot (32), all of Tract Number Eight Hundred Fifty-six (856) as per map recorded in Book 16, at Page 96 of			

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Schedule "D-1"—(Continued)

Item No.	Description of property	Fair market value of the property at date of decedent's death	Amount to be included in gross estate	Rents and other income accrued to date death
	Real Estate: (Los Ang. Co.)—(Cont'd.)			
	Maps, in the office of the County Recorder of said County, except from all of said premises the West One Hundred Forty-two and 59/100 (142.59) feet thereof	300.00	150.00	
	Lot Fifteen (15) of Tract Number Eight Hundred Fifty-six (856) in the Rancho Sausal Redondo, as per map recorded in Book 16, Page 96 of Maps, in the office of the County Recorder of Los Angeles County	750.00	375.00	
3.	Lot One (1) of Tract No. 5291, as per map recorded in Book 54, Page 22 of Maps, in the office of the County Recorder of said County of Los Angeles. Subject to conditions, re- strictions, and rights of way of record.....	4,000.00	2,000.00	
4.	Lot Seven hundred thirty (730) of Tract Fifty-four hundred and forty-five (5445) as recorded in Book 59, pages 69 and 70 of Maps, records of Los An- geles County	2,550.00	1,275.00	

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Schedule "D-1"—(Continued)

Item No.	Description of property	Fair market value of the property at date of decendent's death	Amount to be included in gross estate	Rents and other income accrued to date death
Real Estate: (Los Ang. Co.)—(Cont'd.)				
5.	Lot Five Hundred Seventeen (517), Tract 5445, County of Los Angeles, State of California, as per map recorded in Book 59, pages 69 and 70 of Maps, in the office of the County Recorder of said County	3,250.00	1,625.00	
6.	Lot Two Hundred Fifty-eight (258), Tract 5445, County of Los Angeles, as per map recorded in Book 59, pages 69 and 70 of Maps, in the office of the County Recorder of said County	3,000.00	1,500.00	
7.	Lot Eighty (80), of Tract Number Fifty-four Hundred Forty-five (5445), as per map recorded in Book 59, pages 69 and 70 of Maps, in the office of the County Recorder of said County	3,750.00	1,875.00	
8.	Lot Seven Hundred Thirty-one (731) of Tract No. 5445, (known as Eastmont) as per map thereof recorded in Book 59, pages 69 and 70 of Maps in the of-			

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Schedule "D-1"—(Continued)

Item No.	Description of property	Fair market value of the property at date of decedent's death	Amount to be included in gross estate	Rents and other income accrued to date death
Real Estate: (Los Ang. Co.)—(Cont'd.)				
	file of the County Recorder of said County.....	3,500.00	1,750.00	
	Subject to reservation for right of way over rear five (5) feet for pole line for electric pipe lines, telegraph lines, with right of entry.			
9.	Lot Thirteen (13), in Tract No. 1441, as per map recorded in Book Twenty, pages 30 and 31, of Maps, in the office of the County Recorder of said Los Angeles County	400.00	200.00	
10.	Lot Six Hundred Seventeen (617) of Tract Number Eighty-four Hundred Ninety-eight (8498) as per map recorded in Book 95, pages 53 and 55 of Maps, in the office of the County Recorder of said County....	15,500.00	7,750.00	
11.	Lots Twenty (20) and Twenty-one (21) of the Vendome Park Tract, in the City of Los Angeles, County of Los Angeles, State of California, as per map recorded in Book 8, page 22 of Maps, in the			

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Schedule "D-1"—(Continued)

Item No.	Description of property	Fair market value of the property at date of decendent's death	Amount to be included in gross estate	Rents and other income accrued to date death
Real Estate: (Los Ang. Co.)—(Cont'd.)				
	office of the County Recorder of said County.....	6,750.00	3,375.00	
12.	The West Forty (40) feet of Lot Thirteen (13) in Block One (1) of La Paloma Addition, as per map recorded in Book 5, page 163 of Maps, in the office of the Recorder of said County	2,250.00	1,125.00	
13.	Lot Six (6) of Tract No. 1247, as per map recorded in Book 17, page 169 of Maps, Records of Los Angeles County	5,000.00	2,500.00	
14.	Lot Forty-seven (47) of I. A. Weid's Subdivision, of the Southeast quarter (SE $\frac{1}{4}$) of Section 14, Township 1 South, Range 14 West, S. B. B. & M., as the same appears of record in Book 13, page 39, of Miscellaneous Records in the office of the County Recorder of Los Angeles County	10,760.00	5,380.00	
15.	Lot Fifty-three (53) in Tract 4685, as the same appears of record in Book 51, page 13, of Maps, ree-			

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Schedule "D-1"—(Continued)

Item No.	Description of property	Fair market value of the property at date of decedent's death	Amount to be included in gross estate	Rents and other income accrued to date death
Real Estate: (Los Ang. Co.)—(Cont'd.)				
	ords of Los Angeles County	5,000.00	2,500.00	
16.	Lot Three (3), Tract 6206, in the City of Montebello, as per map in Book 64, page 73, of Maps, in the records of the County of Los Angeles	1,800.00	900.00	
Real Estate (Orange County)				
17.	All that real property situ- ated in the Rancho La Habra, County of Orange, State of California, de- scribed as follows: The West one-half ($W\frac{1}{2}$) of the Southeast quarter ($SE\frac{1}{4}$) of the Southeast quarter ($SE\frac{1}{4}$) of the Northeast quarter ($NE\frac{1}{4}$) of Section Five (5), Town- ship Three (3) South, Range Ten (10) West, S. B.B.&M., and (5) shares of water stock; subject to covenants, conditions, res- ervations, restrictions, rights, rights of way and easements of record.....	6,250.00	3,125.00	
18.	All that real property situ- ated in the County of Orange, State of Califor-			

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Schedule "D-1"—(Continued)

Item No.	Description of property	Fair market value of the property at date of decedent's death	Amount to be included in gross estate	Rents and other income accrued to date death
-------------	-------------------------	--	--	---

Real Estate (Orange Co.)—(Cont'd.)

nia, described as follows:

An undivided one-half ($\frac{1}{2}$) interest in and to the following:

Parcel 1. Lot Three (3) in Block One (1) of the "Yorba Linda Tract" as shown on a Map recorded in Book 5, pages 17 and 18 of Miscellaneous Maps, records of Orange County, California, containing 7.01 acres, more or less.

and

Parcel 2. That portion of Lot Four (4) in Block One (1) of the "Yorba Linda Tract", as shown on a map recorded in Book 5, pages 17 and 18 of Miscellaneous Maps, records of Orange County, California, lying North of the Northerly right of way line of the Pacific Electric Railway bounded and described as follows: Beginning at the point of intersection of the North Line of said Lot Four (4) in Block One (1) and the said Norther-

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Schedule "D-1"—(Continued)

Item No.	Description of property	Fair market value of the property at date of decendent's death	Amount to be included in gross estate	Rents and other income accrued to date death
-------------	-------------------------	---	--	---

Real Estate (Orange Co.)—(Cont'd.)

ly line of the right of way of the Pacific Electric Railway; thence along said North line of Lot Four (4) in Block One (1), South $89^{\circ} 21' 15''$ East to the Northeast corner of said Lot Four (4) in Block One (1) (being a point in the center line of a 60' street); thence along the East line of said Lot Four (4) in Block One (1) (being the center line of said 60 foot street) South $1^{\circ} 11' 40''$ East 155.33 feet to said Northerly line of the right of way of the Pacific Electric Railway; thence along said Northerly line of the right of way of the Pacific Electric Railway North $61^{\circ} 13' 30''$ West 329.33 feet to the point of beginning, containing 0.51 acres, more or less.

and

Parcel 3. Beginning at the Northwest Corner of Lot Four (4) in Block One (1) of the "Yorba Linda

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Schedule "D-1"—(Continued)

Item No.	Description of property	Fair market value of the property at date of decedent's death	Amount to be included in gross estate	Rents and other income accrued to date death
-------------	-------------------------	--	--	---

Real Estate (Orange Co.)—(Cont'd.)

Tract," as shown on a map recorded in Book 5, pages 17 and 18 of Miscellaneous Maps, records of Orange County, California, thence along the Easterly line of the Rancho San Juan Cajon de Santa Ana North 4° 09' 07" West 357.09 feet to the Southerly line of the right of way of the Pacific Electric Railway; (1); thence along the said Southerly right of way line of the Pacific Electric Railway South 61° 13' 30" East 706.59 feet to the North line of said Lot Four (4) in Block One (1); thence along the said North line of Lot Four (4) in Block One (1) South 88° 27' 02" West 593.70 feet to the point of beginning, containing 2.43 acres more or less.

and

Parcel 4. Beginning at the Southwest corner of Lot Two (2) in Block One (1)

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Schedule "D-1"—(Continued)

Item No.	Description of property	Fair market value of the property at date of decedent's death	Amount to be included in gross estate	Rents and other income accrued to date death
-------------	-------------------------	--	--	---

Real Estate (Orange Co.)—(Cont'd.)

of the "Yorba Linda Tract," as shown on a map recorded in Book 5, pages 17 and 18 of Miscellaneous Maps, records of Orange County, California; thence along the South line of said Lot Two (2) in Block One (1) North 88° 34' 20" east 660.43 feet to the Northwest corner of Lot Three (3) in Block One (1) of the Yorba Linda Tract; thence along the West Line of said Lot Three (3) in Block One (1) South 4° 02' 15" East 538.43 feet to the Northerly line of the right of way of the Pacific Electric Railway; thence along said Northerly line of the right of way of the Pacific Electric Railway North 61° 13' 30" West 784.68 feet to the Easterly line of the Rancho San Juan Cajon de Santa Ana; thence along said Easterly line of the Rancho San Juan Cajon de Santa

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Schedule "D-1"—(Continued)

Item No.	Description of property	Fair market value of the property decedent's death	Amount to in gross estate	Rents and other income to date death
Real Estate (Orange Co.)—(Cont'd.)				
	Ana North 4° 09' 07" West 143.29 feet to the point of beginning, con- taining 5.16 acres, more or less. Subject to the following: Covenants, conditions, restrictions, reservations, rights, rights of ways, and easements of record, if any. Together with 15 shares of Yorba Linda Wa- ter Co. stock.....	10,000.00	5,000.00	
19.	All that real property sit- uated in the County of Orange, State of Califor- nia, described as follows: Parcel 1. Beginning at a point in the Westerly line of the East one-half of the Northeast quarter of the Northwest quarter of Sec- tion 20, Township 3 South, Range 9 West, S.B.B.&M., said point being 245 feet Northerly from the South- west corner of said East one-half; thence Easterly along a line parallel with the Southerly line of said East one-half and the ex- tension thereof 883.6 feet			

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Schedule "D-1"—(Continued)

Item No.	Description of property	Fair market value of the property at date of decedent's death	Amount to be included in gross estate	Rents and other income accrued to date death
-------------	-------------------------	--	--	---

Real Estate (Orange Co.)—(Cont'd.)

to the Easterly line of the Rancho San Juan Cajon de Santa Ana; thence Northerly along said Rancho line 249.9 feet to a point; thence Westerly along a line parallel with the Southerly line of said East one-half, 867.87 feet to the Westerly line of said East one-half; thence Southerly along said Westerly line 249.4 feet to the point of beginning and containing 5.014 acres, more or less.

and

Parcel 2. An undivided 5/26ths interest in and to the following: Beginning at a point on the Westerly line of the East one-half of the Northeast quarter of the Northwest quarter of Section 20, Township 3 South, Range 9 West, S.B.B.&M., said point being 630.70 feet Northerly from the Southwest corner of said East one-half; thence along a

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Schedule "D-1"—(Continued)

Item No.	Description of property	Fair market value of the property at date of decedent's death	Amount to be included in gross estate	Rents and other income accrued to date death
-------------	-------------------------	--	--	---

Real Estate (Orange Co.)—(Cont'd.)

line bearing North 85° 24' East from the Westerly line of said East one-half a distance of 656.57 feet to the point of beginning of a tract of land to be hereinafter designated as the pumping plant site; thence from said point of beginning of the pumping plant site, still bearing North 85° 24' East a distance of 50.50 feet to a point; thence South 4° 36' East a distance of 33.00 feet to a point; thence South 85° 24' West a distance of 50.50 feet to a point; thence North 4° 36' West a distance of 33.00 feet to the point of beginning of said pumping plant site.

and

Parcel 3. An undivided one-half interest in the right of way for pipe line for irrigation purposes running Southwesterly from said pumping plant site to the North line of

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Schedule "D-1"—(Continued)

Item No.	Description of property	Fair market value of the property at date of decendent's death	Amount to be included in gross estate	Rents and other income accrued to date death
	Real Estate (Orange Co.)—(Cont'd.)			
	the property first herein described.			
	and			
	Parcel 4. A right of way for road purposes over the West 22 feet of that por- tion of said East one-half of the Northeast quarter of the Northwest quarter not included in Parcel 1 herein.			
	Subject to the following:			
	1. Taxes for 1934-1935 and all other taxes, assess- ments, bonds and penal- ties of record.			
	2. Covenants, conditions, reservations, restrictions, rights, rights of way and easements of record, if any	3,500.00	1,750.00	
20.	All that real property sit- uated in the County of Orange, State of Califor- nia, described as follows: That portion of Section 3, Township 4 South, Range 9 West, S.B.B.&M., more particularly described as follows: Beginning at the point of intersection of the center			

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Schedule "D-1"—(Continued)

Item No.	Description of property	Fair market value of the property at date of decedent's death	Amount to be included in gross estate	Rents and other income accrued to date death
-------------	-------------------------	--	--	---

Real Estate (Orange Co.)—(Cont'd.):

line of Cerro Vista Drive with the Southeasterly prolongation of the Northeasterly line of Lot 21, Tract No. 59, as shown on a map thereof recorded in Book 10, page 18, Miscellaneous Maps, Records of Orange County, California, and running thence, from said point of beginning North 75 deg. 48' East 72.22 feet; thence North 63 deg. 30' 30" West 228.63 feet; thence North 42 deg. 18' West 320.65 feet; thence North 6 deg. 57' 30" West 81.91 feet; thence North 51 deg. 53' 30" West 261.41 feet; thence North 24 deg. 45' West 212.00 feet; thence North 32 deg. 39' 30" West 203.21 feet; thence North 15 deg. 04' 30" West 30.00 feet to a point in the center line of the Santa Ana Canyon Road; thence South 74 deg. 55' 30" West 94.74 feet to the P.T. of a curve having a

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Schedule "D-1"—(Continued)

Item No.	Description of property	Fair market value of the property at date of decendent's death	Amount to be included in gross estate	Rents and other income accrued to date death
-------------	-------------------------	---	--	---

Real Estate (Orange Co.)—(Cont'd.):

radius of 700.00 feet (Engineer's Station 120-33.39); thence Westerly along said curve a distance of 34.24 feet; thence South 17 deg. 52' 40" East 1.68 feet to a point in the center line of Santa Ana Canyon County Road as shown on said map of Tract No. 59; thence along the said center line North 80 deg. 04' 45" East 119.15 feet; thence leaving said center line and running along the Easterly line of said Lot 21 South 23 deg. 46' East 402.95 feet; thence South 45 deg. 16' East 259.44 feet; thence South 26 deg. 52' East 194.55 feet; thence South 51 deg. 07' East 356.23 feet; thence South 67 deg. 09' East 72.45 feet to the point of beginning, containing 1.27 acres of land, more or less.

Reserving therefrom the Southerly twenty (20) feet and that portion included

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Schedule "D-1"—(Continued)

Item No.	Description of property	Fair market value of the property at date of decedent's death	Amount to be included in gross estate	Rents and other income accrued to date death
Real Estate (Orange Co.)—(Cont'd.):				
	in the Right of Way of Santa Ana Canyon Road for road purposes. and			
21.	Lot 21, Tract No. 59, con- taining 7.76 acres more or less	12,500.00	6,250.00	
22.	An undivided one-third ($\frac{1}{3}$) interest in Lots Three (3), Four (4), Five (5) and Six (6) in Block Fifty- four (54) of Olinda Tract, as per map thereof record- ed in Book 31, Page 37, of Miscellaneous Records of Los Angeles County, Cali- fornia. Subject to conditions, re- strictions, rights of way and reservations of record	3,250.00	1,625.00	
Stocks and Bonds				
Stocks:				
23.	35 shares of Standard Oil Company of California. Certificate No. SF/C139476	1,058.75	529.38	
24.	15 shares Union Oil Asso- ciation, certificate No. 04720	255.00	127.50	
25.	606 shares Union Oil Com- pany of California Certificate No. LA/O 62602 for 15 shares			

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Schedule "D-1"—(Continued)

Item No.	Description of property	Fair market value of the property at date of decedent's death	Amount to be included in gross estate	Rents and other income accrued to date death
Stocks—(Continued):				
	Certificate No. LA/O 57186 for 15 shares			
	Certificate No. LA/O 27067 for 20 shares			
	Certificate No. LA/O 31029 for 32 shares			
	Certificate No. LA/O 41694 for 8 shares			
	Certificate No. LA/O 46640 for 8 shares			
	Certificate No. LA/O 51828 for 8 shares			
	Certificate No. LA 26852 for 100 shares			
	Certificate No. LA 26853 for 100 shares			
	Certificate No. LA 26854 for 100 shares			
	Certificate No. LA 26855 for 100 shares			
	Certificate No. LA 26856 for 100 shares			
		10,302.00	5,151.00	
26.	100 shares of Security-First National Bank of Los An- geles stock	3,300.00	1,650.00	
Bonds:				
27.	\$20,000 par value U. S. Treasury 3¼% bonds.....	21,500.00	10,750.00	
28.	\$26,000 par value U. S. 1st Liberty bonds	26,346.67	13,173.34	

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Schedule "D-1"—(Continued)

Item No.	Description of property	Fair market value of the property at date of decedent's death	Amount to be included in gross estate	Rents and other income accrued to date death
Bonds—(Continued) :				
29.	\$23,100 par value U. S. 4th Liberty bonds	23,735.25	11,867.63	
30.	\$4,975 par value Home Owners' Loan Corporation bonds, 3¼%	5,155.34	2,577.67	
31.	10 \$1,000 par value bonds issued by the Central In- vestment Corporation, be- ing Nos. 308 to 317, inclu- sive	6,500.00	3,250.00	

Mortgages, Notes and Cash

Notes:

- | | | | |
|-----|---|--------|--------|
| 32. | Promissory note dated Sep-
tember 30, 1933, due Sep-
tember 20, 1934, in the
principal sum of \$750.00,
executed by Theresa M.
Allen, formerly Theresa M.
Caldwell, in favor of James
A. Kammerdiner and Myr-
tle B. Kammerdiner, his
wife, as joint tenants, se-
cured by a deed of trust
recorded in Book 12474,
page 381, Official Records
of Los Angeles County..... | 750.00 | 375.00 |
| 33. | 2 promissory notes, each
for the sum of \$1500.00 bear-
ing interest at 6%, each
dated July 1, 1931, pay-
able three and six months, | | |

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Schedule "D-1"—(Continued)

Item No.	Description of property	Fair market value of the property at date of decedent's death	Amount to be included in gross estate	Rents and other income accrued to date death
Notes—(Continued) :				
	respectively, after the date thereof, executed by Arthur E. Dubrow and Clarice K. Dubrow in favor of James A. Kammerdiner and Myrtle B. Kammerdiner		No value	
34.	Promissory note dated April 1, 1934, executed by Douglas L. Edmunds and Laura L. Edmunds, unpaid balance \$2,700.00.....	2,700.00	1,350.00	
35.	Trust deed note dated September 19, 1934, for \$3500.00 made payable to James A. Kammerdiner and Myrtle B. Kammerdiner, husband and wife, as joint tenants with right of survivorship, executed by E. E. Ross and Ida E. Ross, interest at 7%, due in installments of \$400.00 or more on September 19, 1935, \$400.00 or more on September 19, 1936, and the unpaid balance of principal and interest on September 19, 1937	3,500.00	1,750.00	
36.	Trust deed note dated August 21, 1928, for \$5,500.00			

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Schedule "D-1"—(Continued)

Item No.	Description of property	Fair market value of the property at date of decedent's death	Amount to be included in gross estate	Rents and other income accrued to date death
Notes and Cash—(Continued) :				
	made payable to James A. Kammerdiner and Myr- tle B. Kammerdiner, exe- cuted by Nellie M. Ritchie, interest at 7%, due August 21, 1931, extended to Au- gust 21, 1934, unpaid bal- ance as of April 4, 1935, was \$1500.00. Interest paid to August 21, 1934.....	1,500.00	750.00	
37.	Cash:	25,381.50	12,690.75	
38.	Bank Accounts:			
	Security-First National Bank, Security Office, Term No. 501166 7,680.50			
	Security-First National Bank, Beverly & Western, Term account No. 65619 6,874.53			
	Security-First National Bank, Beverly & Western, commercial account14,997.41			
	Citizens National Trust & Savings Bank, Second & Western 7,776.84			

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Schedule "D-1"—(Continued)

Item No.	Description of property	Fair market value of the property at date of decedent's death	Amount to be included in gross estate	Rents and other income accrued to date death
Bank Accounts—(Continued) :				
	Security-First National Bank First National Office, Term No. 248595	447.69		
	Security-First National Bank, Fullerton Branch, Term No. 812.....	2,146.00		
		39,922.97	19,961.49	
	One-half (1½) undivided interest in a certain bank account at the Fullerton Branch of the Bank of America National Trust & Savings Association, stand- ing in the name of Ritchie- Kammerer and Kammer- diner, and having a bal- ance as of the date of death of Myrtle B. Kam- merdiner, deceased, of \$1323.51	661.75	330.88	
39.	\$550.00 par value Ameri- can Express Co. Traveler's checks	550.00	275.00	
40.	\$5,000 U. S. Postal Sav- ings certificates Certificates Nos. 1902-26; 1938, for \$100; Certificates Nos. 1967-1999 for \$100....	5,000.00	2,500.00	

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Schedule "D-1"—(Continued)

Item No.	Description of property	Fair market value of the property at date of decedent's death	Amount to be included in gross estate	Rents and other income accrued to date death
Miscellaneous				
41.	Jewelry:			
	1 ladies wrist watch-chips..	210.00	105.00	
	1 ladies ring, diamond and chips	150.00	75.00	
	1 ladies ring, 3 diamonds..	700.00	350.00	
	1 ladies bar pin, 19 dia- monds and chips.....	650.00	325.00	
	Grand Total.....	<u>\$285,809.23</u>	<u>\$142,904.64</u>	✓

[Page 9]

SCHEDULE D-2

Other Miscellaneous Property

Instructions

Under this schedule include all items of gross estate not returned under another schedule, including the following: Debts due the decedent; interests in business; claims, rights, royalties, pensions; leaseholds, judgments, shares in trust funds; household goods and personal effects, including wearing apparel; farm products and growing crops; livestock, farm machinery, automobiles, etc.

When an interest in a copartnership or unincorporated business is returned, submit in duplicate statement of assets and liabilities as of date of death and for the five years preceding death, and statement of the net earnings for the same five years. Good will must be accounted for. In general, the same information should be furnished and the same methods followed as in valuing close corporations.

In listing automobiles give make, model, year, and condition as of date of decedent's death.

In describing an annuity, the name and address of the

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

grantor of the annuity should be given, or if payable out of a trust or other fund, such a description as will fully identify it. If payable for a term of years, the duration of the term and the date on which it began should be given, and if payable for the life of a person other than the decedent, the date of birth of such person should be stated.

Judgments should be described by giving the title of the cause and the name of the court in which rendered, date of judgment, name and address of judgment debtor, amount of judgment, rate of interest to which subject, whether any payments have been made thereon, and if so, when and in what amounts.

For further instructions, see articles 12, 13 (4), and 13 (7) to 13 (10), inclusive, of Regulations No. 80.

Did the decedent, at the time of his death, own any interest in a copartnership or unincorporated business? (Answer "Yes" or "No.")—Yes.

Did the decedent, at the time of his death, own any miscellaneous property not returnable under any other schedule? (Answer "Yes" or "No.")—No.

Item No.	Description	Fair market value at date of death	Interest and other income accrued to date of death
		\$	\$
	Decedent and her surviving husband were in the business of leasing rotary jars for oil wells, which business had no tangible assets save a few old jars of little or no value.		
	Totals	\$	\$
	Grand Total (also enter under the Re- capitulation, Schedule L).....		\$00

(If more space is needed, insert additional
sheets of same size)

Estate of Myrtle B. Kammerdiner

Date of death—April 4, 1935.

(Testimony of James A. Kammerdiner.)
Defendant's Exhibit No. 12—(Continued)
[Page 15]

DEDUCTIONS
Schedule H
Funeral and Administration Expenses

Instructions

Funeral expenses and administration expenses should be itemized, giving names and addresses of persons to whom payable, and exact nature of the particular expense. Preserve all vouchers and receipts for inspection by an internal revenue agent.

No deduction may be taken upon the basis of a vague or uncertain estimate.

Executors' or administrators' commission should be entered in the amount actually paid, or which it is reasonably expected will be paid, not to exceed the amount allowable by the laws of the jurisdiction wherein the estate is administered, and not in excess of the amount usually allowed in cases similar to that of this estate. Where the commission has not been awarded by the court, deduction on final audit is discretionary with the Commissioner, subject to future adjustment.

Attorney's fee should be deducted in the amount paid, or to be paid. If the fee has not been paid at the time of the final audit, deduction is discretionary with the Commissioner, subject to future adjustment.

Estate, legacy, succession, and inheritance taxes, and taxes on income received after death, are not deductible. Credit to a limited extent may, under Schedule P, Computation of Tax, be claimed for estate, legacy, succession, inheritance, and gift taxes.

For further instructions, see articles 29 to 35, inclusive, and 52, Regulations No. 80.

Item No.	Amount of Item	Totals
Funeral expenses:	\$	
Total Funeral Expenses (also enter under Schedule L)....		\$ 787.73✓

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Item No.	Amount of Item	Totals
Executors' commissions, estimated, paid (also enter under Schedule L)		\$
(Strike out words not applic- able)		
Attorneys' fees, estimated, paid (also enter under Schedule L)....		\$
(Strike out words not applic- able)		
Miscellaneous administration expenses:		
Taxes a lien at death.....	2,698.99	
Total Miscellaneous Administra- tion Expenses (also enter under Schedule L)		\$ 2,698.99
(If more space is needed, insert additional sheets of same size)		
Estate of Myrtle B. Kammerdiner		
Date of death—April 4, 1935		
H		

[Page 19]

SCHEDULE L
Recapitulation

Schedule	Gross Estate	Value
A Real estate		\$
B Stocks and bonds (grand total of all pages of this schedule).....		
C Mortgages, notes, cash, and insurance.....		
D-1 Jointly owned property.....	142,904.64	✓
D-2 Other miscellaneous property.....		
E Transfers		
F Powers of appointment		
G-1 Property identified as previously taxed.....		
Total Gross Estate		\$142,904.64 ✓

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Schedule	Deductions	Amount
H	Funeral expenses	\$ 787.73✓
	Administration expenses:	
	Executors' commissions	
	Attorneys' fees	
	Miscellaneous Taxes a lien at death.....	2,698.99✓
I	Debts of decedent	
J	Unpaid mortgages	
	Net losses during administration	
	Support of dependents	
K	Charitable, public, and similar gifts and bequests	
Total Deductions, except specific exemption and property previously taxed.....		\$ 3,486.72✓

SCHEDULE M

Net Estate for Tax Imposed by Revenue Act of 1926—
Resident Decedent

1.	Total gross estate	\$142,904.64✓
2.	Total deductions, except specific exemption and property previously taxed	\$ 3,486.72
3.	Specific exemption	100,000.00
4.	Total deductions, except property previously taxed (Item 2 plus Item 3).....	\$103,486.72✓
5.	Deduction for property previously taxed without proportionate reduction (Schedule G-2, Item C)	\$.....
6.	Proportionate reduction (proportion of Item 4 that Item 5 bears to Item 1).....	\$.....

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

7. Net deduction for property previously taxed (Item 5 minus Item 6)	\$	
8. Total deductions (Item 4 plus Item 7)		\$103,486.72√
9. Net estate (Item 1 minus Item 8)	\$	39,417.92√

Estate of Myrtle B. Kammerdiner

Date of death—April 4, 1935

L M

[Page 20]

SCHEDULE N

Net Estate for Additional Tax Imposed by Revenue Act of 1932
—Resident Decedent

1. Total gross estate		\$142,904.64√
2. Total deductions, except specific exemption and property previously taxed	\$	3,486.72√
3. Specific exemption		50,000.00
4. Total deductions, except property previously taxed (Item 2 plus Item 3).....	\$	53,486.72√
5. Deduction for property previously taxed without proportionate reduction (Schedule G-2, Item C)	\$	
6. Proportionate reduction (proportion of Item 4 that Item 5 bears to Item 1).....	\$	
7. Net deduction for property previously taxed (Item 5 minus Item 6)	\$	53,486.72√

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

8. Total deductions (Item 4 plus
Item 7)

—————√

9. Net estate (Item 1 minus Item
8)

\$ 89,417.92√

Estate of Myrtle B. Kammerdiner

Date of death—April 4, 1935

N O

COMPUTATION OF TAX

1. Gross tax imposed by 1926
act\$ 394.18√

2. Credit for gift tax imposed
by 1924 and/or 1932 act.....

3. Gross tax less credit for gift
tax (1 minus 2).....\$

4. Credit for estate, inheritance,
legacy, or succession tax..... 315.34√

5. Net tax imposed by 1926 act
(3 minus 4).....\$ 78.84√

6. Total gross taxes imposed by
1926 and 1932 acts RWC 4,647.61√
(Tentative Tax, 1932 Act)....\$ ~~4,259.25~~

7. Gross tax imposed by 1926 act 394.18√

8. Additional tax (6 minus 7)..~~\$ 3,865.07~~
RWC 4,253.43

9. Credit for gift tax imposed by
1932 act

4,253.43√RWC

10. Net additional tax (8 minus 9)

~~3,865.07~~

11. Total net tax (5 plus 10).....

~~\$3,943.91~~

4,332.27√RWC

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 12—(Continued)

Interest 4/4/36 to 8/17/36 8.60

Paid.....
4,340.87

Estate of Myrtle B. Kammerdiner

Date of death—April 4, 1935

P

Jurat for Beneficiaries, Custodians, and Trustees

I-We, James A. Kammerdiner, surviving joint tenant, the undersigned beneficiary.....Custodian-Trustee, do hereby solemnly swear-affirm that I have carefully read the instructions printed on this form; that hereon is listed all of the property, tangible or intangible, contained in the gross estate of the decedent which has come into my possession and control; that to the best of my knowledge, information, and belief, the value shown for each item of property listed hereon was the fair market value of the same at the time of the decedent's death; and that the debts, expenses, and charges entered hereon as deductions from the gross estate are correct and legally allowable.

(Name) JAMES A. KAMMERDINER,

(Address) 237 South Highland, Los Angeles,
California.

Subscribed and sworn to before me, at Los Angeles, California, this 14th day of March, 1936.

VERA M. STOKES,

Notary Public.

[Endorsed]: Filed Dec. 29, 1941.

(Testimony of James A. Kammerdiner.)

By Mr. Mitchell:

Q. I hand you, Mr. Kammerdiner, Defendant's Exhibit 12, a certified copy of the Estate Tax Return that was [47] filed by you in this case, and call your attention to page A-9. Turn to A-9 at the bottom of the page. "O-9" it may be. I think it is "A-9." Yes.

Mr. Smith: What schedule is that?

Mr. Mitchell: That is under Schedule D-1, jointly owned property.

Q. When was that first piece of real estate acquired by you and Mrs. Kammerdiner?

Mr. Bloom: Objected to as incompetent, irrelevant and immaterial, forming no part of the issues in this case.

Mr. Mitchell: If your Honor please, I am attempting to establish the practice and conduct of the spouses from the time of their marriage down to the date of the wife's death in the purchase, the making of investments, with joint property, because of the bearing it would have on the rotary jar business and the assets of the rotary jar business which are involved in this case.

Mr. Bloom: We will stipulate that all the property was owned as Joint Tenancy, if that is what you are trying to prove.

Mr. Mitchell: No. I am trying to attempt to establish the source of the purchase price.

The Court: The objection is overruled. You may answer the question.

(Testimony of James A. Kammerdiner.)

Do you remember the question, Mr. Kammerdiner?

The Witness: I do not. [48]

By Mr. Mitchell:

Q. Do you see Item 1 there on Page A-9?

A. Item 1?

Q. Yes. A. Yes.

Q. The left-hand margin. Then this would be Item 2 and so on down the following pages.

Can you identify that first parcel of real estate there? A. I don't identify it.

Q. That was a Torrens Title, according to the last paragraph under Item 1.

A. What was that, please?

Q. It was registered under the Torrens Title. Do you understand what I mean?

A. No.

Q. The last paragraph reads: "This property has been registered under the Torrens Title and is covered by Certificate No. CC-27772, issued in the name of James A. Kammerdiner and Myrtle B. Kammerdiner, as Joint Tenants."

Does that refresh your recollection at all?

A. The only piece of property that I was interested in with the Torrens Title is down at Lawn-dale in the oil fields. That is the only one I know of.

Q. You valued this at \$1,920.00, you notice, and half of it was included in the gross estate, half of that, \$960.00. [49] A. Yes.

(Testimony of James A. Kammerdiner.)

Q. Does that refresh your recollection at all? When did you acquire that property in Lawndale?

A. I don't know. I believe that was along in '25.

Q. 1925? A. '25 or '26.

Q. That was purchased by yourself and your wife?

A. No; John Grant, Del Campbell, my wife and I.

Q. The four of you? A. Yes.

Q. Well, that is another piece of property.

A. Well, that is the only one I got.

Q. The interest of you and your wife was paid for with what money, Mr. Kammerdiner? What was the source of the money with which you paid for your interests?

A. Well, that came from the jar business at that time.

Q. I see. Some of the profits of the jar business?

A. Yes.

Q. Did you and Mrs. Kammerdiner own any property before you went into the jar business?

A. Yes, sir.

Q. Any real estate? A. Yes.

Q. How long before? About what year was it purchased? [50]

A. We purchased some in 1909, one year after we were married.

Q. Was that real estate? A. Yes.

Q. Where was that real estate located? And what kind of property was it?

(Testimony of James A. Kammerdiner.)

A. Two vacant lots on Manhattan Avenue.

Q. In what city? Los Angeles?

A. Los Angeles.

Q. Do you recall about how much was paid for it?

A. I think the total price was \$1300.00 and we were to pay thirty-five to forty dollars a month on that. We have had them ever since.

Q. Where did this \$1300.00 come from with which to make this purchase?

A. From my salary.

Q. From your salary? A. Yes.

Q. Did you own those two lots at the time of your wife's death? A. Yes.

Q. Was that taken in your joint names or do you know? A. No.

Q. It was in your name? Can you find the description there?

Mr. Smith: Was it in your name at the time Mrs. Kammer- [51] diner deceased? Was that property in your name?

The Witness: No, it was a Joint Tenancy.

By Mr. Mitchell:

Q. Oh. When was that change made?

A. At the same time that——

Q. (Interrupting): The agreement was signed at Mr. Ellis' office in 1928? A. Yes.

Q. And can you identify those two lots amongst those parcels of property?

A. I will be darned if I know how to find them.

(Testimony of James A. Kammerdiner.)

Q. I call your attention to Item 11 on page A-11, Item 11 in the middle of the page, Lots 20 and 21 of the Vendome Park Tract, Los Angeles.

A. That is the two lots.

Q. Those are the two lots? A. Yes.

Mr. Mitchell: I call your attention to the fact that that was joint tenancy property, and half of it, the wife's half, was included in the gross estate by the plaintiff himself.

The Court: All right.

By Mr. Mitchell:

Q. Was there any other property purchased by you and your wife prior to the rotary jar business?

A. Yes. We owned a lot on the corner of St. Andrews [52] and Clinton Street.

Q. St. Andrews? A. And Clinton.

Q. And Clinton Street? A. Yes.

Q. In Los Angeles? A. Yes.

Q. Was that owned until the time of Mrs. Kammerdiner's death? A. Yes.

Q. What did you pay, if you remember, approximately, for that property?

A. We paid \$1000.00 for that.

Q. Did the funds come out of the joint account with which that was paid?

A. Yes—no, there was no joint account at that time.

Q. What year was that, Mr. Kammerdiner?

A. That was—I think it was the last part of 1909.

(Testimony of James A. Kammerdiner.)

Q. Oh, I see. You hadn't at that time started the joint account?

A. We had no money to start an account with.

Q. When was the first joint account started?

A. When I went to work for the Associated Oil Company at Goya.

Q. That was about what year, Mr. Kammerdiner?

A. That was in 1909. [53]

Q. Well, it was shortly after that you had some money that could be saved; is that the idea?

A. Yes.

Q. And that account was kept in the one you referred to before, the one in Los Angeles, and only your emergency account kept in Fullerton?

A. Yes.

Q. Can you find that piece of property on Manhattan among those parcels?

By the way, before you look for that, Mr. Kammerdiner, did Mrs. Kammerdiner have an account in her name at that time?

A. I think she did.

Q. A bank account?

A. I think she did.

I couldn't find that.

Q. You can't find that, but it was owned at the time of death?

A. How?

Q. It was owned at the time of your wife's death?

A. Yes.

Q. Did you have a new deed made out in that case transferring it to the joint account, or was

(Testimony of James A. Kammerdiner.)

it originally taken in both of your names, that Manhattan property?

A. That was bought in my name to start with.

Q. To start with? [54] A. Yes.

Q. When you say it was changed, do you mean that agreement changed it, that agreement of 1928 that was made in Mr. Ellis' office, or was something done besides that to change it?

A. No, sir. There wasn't any change from the way things were before.

Q. I don't understand. What was the answer?

A. There was no change that I know of.

Q. There was nothing done about the deeds?

A. The deeds were changed, yes, because Mr. Ellis, I believe, transferred them to a brother-in-law or sister-in-law and then back to us, so there had to be a change in there.

Q. That was done in 1928. Was that done in respect to all parcels that you owned that stood in your name, or in her name prior to 1928; all real estate, I mean? A. Yes.

Q. That was done by Mr. Ellis in 1928 about the time that the contract was signed?

A. Yes.

Q. Did any property stand in your wife's name at that time, any real estate?

A. I do not believe so, no, sir.

Q. Did you purchase any other properties after 1909 and before 1923? [55] A. Yes, sir.

Q. What was the next property purchased?

(Testimony of James A. Kammerdiner.)

A. I bought a quarter interest in a 15½ acre orange grove in Orange County.

Q. Was that taken in your name, too?

A. Yes.

Q. What, if anything, did Mrs. Kammerdiner have to do with the negotiating of those purchases with you, or did you handle them all alone without any assistance from her? A. No.

Q. What is that?

A. I would consult with her on anything of that kind.

Q. You always consulted her?

A. Always consulted her.

Q. Before the purchase was made?

A. How?

Q. Before the purchase was made?

A. Yes.

Q. What was this third piece of property that was purchased, again, please?

A. It is about—I bought a fourth interest in a 15½ acre orange grove.

Q. What year was that, Mr. Kammerdiner?

A. Well, I think was about '10 or '11.

Q. 1910 or '11? A. Yes. [56]

Q. About what was paid for that interest?

A. I think I paid \$5600.00 for it.

Q. And the money used to purchase it came from where?

A. From practically—all the money that it took to buy that came from some oil stock I bought in Maricopa practically.

(Testimony of James A. Kammerdiner.)

Q. Before?

A. They paid monthly, and I turned the money right over and paid for the ranch.

Q. When was this oil stock, the Maricopa oil stock, purchased?

A. I don't know. It seems shortly after I went to Brea that I borrowed the money to pay for that.

Q. How did you repay that loan? Out of the profits from the boarding house and the drilling at Brea? A. Yes, sir.

Q. Was that money taken from the joint account or was it paid as it came in?

A. Well, it was taken from our earnings on the lease out there——

Q. (Interrupting): That is, the earnings of yours and your wife? A. Yes, sir.

Q. Partly from the boarding house and partly from your salary? A. Yes. [57]

Mr. Mitchell: Counsel stipulates that that is Item 18 in the Estate Tax Return; is that correct?

Mr. Bloom: But that adds up to 15 acres. Is that the 15 acre orange ranch that you were speaking of as having been purchased?

The Witness: No; that is undivided, that 15 acres that I have a quarter interest in.

By Mr. Mitchell:

Q. This Item 18 is an undivided one-half interest in and to the following—and it adds up to 15. [58]

(Testimony of James A. Kammerdiner.)

A. I now own half of it, but at the time he asked the question I only owned a quarter of it.

Mr. Bloom: That is the piece of property you were referring to?

The Witness: Yes.

By Mr. Mitchell:

Q. Now, after you purchased this quarter interest, when did you purchase the additional quarter interest, approximately?

A. I think that was around '30, 1930.

Q. That was paid for with profits from the rotary jar business?

A. I loaned some money to a man that owned the other quarter.

Q. What money did you loan? Some of the funds that were profits of the rotary jar business?

A. Yes, I imagine so.

Mr. Bloom: What was that answer?

The Witness: Yes. [59]

Q. Now, were there some other properties purchased prior to 1922 besides these three or four that you have already mentioned?

A. Yes. I think we bought a house. I think it was before '23, on Clinton Street.

Q. In Los Angeles? A. Los Angeles.

Q. Do you recall about the time?

Q. I mean prior to 1923.

A. I don't mean 1930—1910.

Q. Oh, 1910? A. Yes.

Q. How was that paid for? With what funds?

A. My work.

(Testimony of James A. Kammerdiner.)

Q. And it didn't include any of your wife's funds, [60] or did it come from a joint account?

A. I think it came from the joint account. We just bought it on small payments.

Q. When you say, "We bought it," just what do you mean, Mr. Kammerdiner? When you say "We"? Do you refer to yourself and your wife?

A. Yes.

Q. What did she have to do with it?

A. Well, she was really the one that suggested that we buy it.

Q. Well, did she furnish some of the money to pay for it?

A. It came from our bank account, yes, sir.

Q. Was it your bank account or was it the joint bank account?

A. Well, I wouldn't right out say for that.

Q. You don't recall?

A. I wouldn't be able to say that.

Q. How much was paid for that piece of property?

A. I think we paid \$3500.00 for that.

Q. By the way, did you have that property at the time of your wife's death? A. Yes.

Q. Was that also transferred by Mr. Ellis?

A. Yes.

Q. Was it taken originally in your name? [61]

A. Yes.

Q. And then it was in 1928 transferred to Joint Tenancy? A. Yes.

(Testimony of James A. Kammerdiner.)

Q. Was that an improved lot with a house on it?

A. Yes.

Q. Where was it?

A. It is 648 Clinton, close to Western Avenue.

Mr. Mitchell: Counsel will stipulate that this piece of property to which the witness has just referred is included under Schedule D-1, jointly owned property, and half of the value was returned by the taxpayer in the tax return as a part of the gross estate.

Mr. Smith: The return is in evidence, and I think that speaks for itself. We won't stipulate to the last part.

The Court: Merely identify it if it is in there.

Mr. Bloom: We will stipulate in this way, if your Honor please, that all real estate, outside of the rotary jar business, was returned in the jointly owned property schedule D-1. [62]

Q. Do you recall any other properties, either real estate or stocks or bonds or mortgages, that were purchased before 1923?

A. Yes. I recall one lot down at Culver City. We bought that when we were out at Brea.

Q. That was about what year? You were at Brea for six years, from 1909 to 1915, I believe.

A. Yes. That would be in 1910.

Q. Also 1910? A. Yes.

Q. And your testimony regarding the purchase price of that would be the same as regarding the other lots, that is the source of the money that was used to pay for it?

(Testimony of James A. Kammerdiner.)

A. Yes, I would say that, yes.

Q. Did it come out of the joint account?

A. Yes.

Q. Do you recall any other properties that you bought [63] between 1910 and 1923?

A. No, I do not.

Q. There are a number of other parcels of real estate, quite a few, and I will ask you whether the balance of those pieces of real estate that are contained in Schedule D-1 of your Estate Tax Return, were they all purchased after 1923, between 1923 and the date of your wife's death?

A. Well, I should say they were, yes.

Q. They would have to be if you have testified to everything that was purchased before 1923.

A. Yes.

Q. Were they purchased with proceeds of the rotary jar business, profits of the rotary jar business?

A. Yes.

Q. Was that the only source of income of yourself and wife during that period?

A. No, sir.

Q. What was the other source of income?

A. Well, we had orange groves.

Q. Oh, rents and profits from real estate?

A. Yes.

Q. You also owned some stocks and bonds that paid dividends?

A. Yes.

Q. Those were also purchased after 1923, were they?

A. Yes. [64]

Q. And they were purchased with profits from the rotary jar business, were they?

A. Yes.

(Testimony of James A. Kammerdiner.)

Q. And American Express Travel checks and Postal Savings certificates, Items 39 and 40 under Schedule D-1 of the Estate Tax Return, were those purchased also with profits from the rotary jar business, or income from some of the property you have described? A. Yes.

Q. Now, Mr. Kammerdiner, you have testified about protective patents that were acquired after the basic patent was acquired? A. Yes. [65]

(Thereupon, at 12:15 o'clock P. M. a recess was taken until 1:30 o'clock P. M. of the same date.) [66]

Q. I hand you, Mr. Kammerdiner, a certified copy of the Partnership Return of Income for the calendar year 1926, filed by Mr. and Mrs. J. Kammerdiner, doing business as J. Kammerdiner, which purports to be verified by you.

I presume that is your signature, "J. Kammerdiner"? A. Yes.

Q. I call your attention to the schedule attached in which the total income of the partnership appears and the deductions are itemized, and particularly this item "House, 4800 Clinton Street, Rents Received, \$405.00; Repairs and Taxes, \$273.00; Depreciation, \$140.00."

Is that the Clinton Street property you testified to this morning? A. Yes.

Q. Then also rental on 21½ acres on Main Street, [67] \$132.50; taxes and repairs, \$94.21; net income, \$38.25."

(Testimony of James A. Kammerdiner.)

Is that property you testified to also this morning, or was that acquired later?

A. No, that is another $2\frac{1}{2}$ acres on Main Street.

Q. Then here is a 25-acre ranch, for interest and taxes, \$172.00. That is a deduction. Did you testify to that parcel this morning, of real estate? Is that one of them?

A. No, I don't believe we did find that one.

Q. When was that acquired, if you remember? Sometime prior to 1926, the taxable year here, apparently.

A. I believe so. O. A. Johnson and William Kammerer and I own that.

Q. Then you had a fourth interest?

A. I have a third interest.

Q. Then the Barnes City, one-half acre, taxes \$15.66. Did you testify to that?

A. What is that one?

Q. Barnes City, half an acre.

A. We called it Culver City this morning.

Q. Tax on Athens lot 186. Did you testify to that? A. No.

Q. When was that acquired?

A. Well, that was acquired during that oil boom.

Q. Was it acquired before you patented the rotary jar? [68] A. No.

Q. Was it afterwards? A. Yes.

Q. Then the lots on Manhattan Street; you did testify to that? A. Yes.

Q. Taxes, \$360.26. Then the St. Andrews lot and house?

(Testimony of James A. Kammerdiner.)

A. Yes. That is the one on the corner of Clinton and St. Andrews.

Q. You report the income and then deduct the taxes? A. No. We have two places.

Q. Was that acquired before '23, the St. Andrews lot and house?

A. Well, I believe it was acquired afterwards. It was close to there, though.

Q. Mr. Kammerdiner, I call your attention to the bottom of the schedule: "As explained in last year's report, both Mrs. Kammerdiner and Mr. Kammerdiner work in the business and agreement has been made that Mrs. Kammerdiner receives vested interest in one-half of property and income, making hers separate property."

Now, that was true, wasn't it? You swore to that at that time.

Mr. Bloom: I object to that. The instrument speaks for itself. [69]

Mr. Mitchell: I am asking him whether it is true, whether he made a mistake then when he swore to this. I don't know.

The Witness: I say I didn't make a mistake because everything we had was——

By Mr. Mitchell:

Q. 50-50?

A. ——Joint Tenancy, right of survivorship. It didn't make any difference where it come from or how it worked, it was the right of survivorship.

Q. When did that start?

(Testimony of James A. Kammerdiner.)

A. The day we got married.

Q. So that this partnership return, your partnership agreement or Joint Tenancy agreement, whatever you call it, was entered into at the time you got married?

A. We didn't think so very much of it until the jar business came along.

The Court: Then you had something to divide.

The Witness: We had something to divide. I have six sisters and a mother and a father living, and my wife never knew or saw or heard of them at all, and in that case, why, she was afraid they might come out here and take what little she had left if I would pass on, so when we got a chance to split the income I thought that was a very good idea.

By Mr. Mitchell:

Q. Wasn't that agreement made, though, in Mr. Ellis' [70] office in 1928?

A. No. We made that agreement at the start of the jar business, '23.

Q. That it was to be 50-50 and in case one died the other would get all?

A. Yes.

Q. Is that the idea?

A. Yes.

Q. And there was no difference between that agreement and the one you made when you were married?

A. Well, I couldn't say there was any difference with the agreement. I couldn't work out any difference.

Q. Let's get it straight. You had some profits

(Testimony of James A. Kammerdiner.)

to divide down on the Brea lease, didn't you? Mrs. Kammerdiner, I believe you testified at the trial before the Board of Tax Appeals, saved about \$3,000.00, did she not?

A. Yes, or possibly more than that. She run that boarding house for about six years and I think the profit was a little more than that.

Q. A little more than \$3,000.00? A. Yes.

Q. And you had some savings from your salary?

A. All my savings.

Q. And they all went into one joint account?

A. Yes.

Q. And you and your wife considered that you owned [71] them 50-50, didn't you?

A. Well, that is the only thing we figured out, but it was lined up after we got the jar business that we——

Q. (Interrupting) It was made more definite, at least, when you got the jar business?

A. No, it made it more alluring for somebody to attack us or sue us.

Q. I was thinking of the agreement, not of the dangers.

A. Well, there was danger. My wife thought some of my sisters or my father or mother would come out here and where you have something that is worth something like that, there is always somebody looking for it.

Q. Of course. And that agreement included not only the rotary jar business but all the other prop-

(Testimony of James A. Kammerdiner.)

erty, whether it stood in your name or Mrs. Kammerdiner's name?

A. That is the way we stood on it.

Q. But it was not until 1928 that you had this so-called Joint Tenancy agreement? A. Yes.

Q. Drawn up?

A. They told us that we couldn't—they wouldn't allow us to split the tax.

Q. For income tax purposes?

A. Yes, unless it was put into writing. That was the reason that came up then.

Q. You say that that was the agreement, really from [72] the time you were married.

Just what do you mean by that, Mr. Kammerdiner? Do you mean there was some understanding between you and your wife at that time if you ever owned any property?

A. I think any couple goes through that. I think that starts any time a couple gets married.

Q. Did you contemplate that she would have just as much management of the property acquired as you did? Have just as much say about what was going to be done?

A. On anything of any importance it was always taken up with her.

Q. Or she took it up with you?

A. Or she took it up with me in everything.

Q. You felt that you each had an equal right to have a say in what should be done with your investments and property; is that correct?

(Testimony of James A. Kammerdiner.)

A. Yes, in any of any great importance.

Q. Now, that related to the patents as well as real estate, that agreement, all properties, did it not?

A. There was no way of transferring that to her.

Q. May I ask you this, Mr. Kammerdiner: The Board held so far as your taxes were concerned, income tax in '25, '26, and '27, that during those three years a partnership existed between you and Mrs. Kammerdiner, and ruled that you could each report half of that income? A. Yes. [73]

Mr. Bloom: If that is a statement, we will object to the statement.

Mr. Mitchell: It is preliminary.

Mr. Smith: It is a very important question in this case.

Mr. Mitchell: It is a matter of public knowledge that the Board so held.

Mr. Bloom: The decision of the Board speaks for itself as to what it held.

The Court: Go ahead.

Mr. Smith: We don't know whether it had the same facts as we have before us now.

The Court: Of course I can take judicial notice of the attitude of the Internal Revenue toward community property, which has continued to the present time. People have resorted to all sorts of means to give effect to the Community Property Law of California. The Internal Revenue isn't convinced yet that anybody is right in any income

(Testimony of James A. Kammerdiner.)

tax community property case, including myself. They never concede anything until they have a decision of the United States Supreme Court. It doesn't make any difference what the Board of Tax Appeals decided. We can't review their decisions, but they are not binding on us as precedents.

Mr. Mitchell: I don't think that question was exactly involved, but only incidentally.

The Court: Then I will sustain the objection. You [74] can offer their decision in evidence.

Mr. Mitchell: Very well.

The Court: Evidently he tried on a partnership theory in order to get what he was entitled to under the law of California and what the Bureau of Internal Revenue has sought to refuse to everybody for years and that is full effect of community property rights.

Mr. Mitchell: I think he succeeded in that case.

The Court: Glory be to him. Even if he had to call his wife a partnership, glory be to him. I am in favor of anybody who can enforce the right of community property against the Internal Revenue Bureau because they have taken an arbitrary attitude, and it is recognized by all the Courts that they have.

By Mr. Mitchell:

Q. Mr. Kammerdiner, the purpose of the partnership was to promote and make money out of the products and the rights under those patents; isn't that true?

(Testimony of James A. Kammerdiner.)

Mr. Bloom: Objected to as assuming a fact not in evidence.

Mr. Mitchell: We will have to get him to change his testimony, then. [75]

By Mr. Mitchell:

Q. The title of the return is "Partner——"

The Court (Interrupting): You are arguing with the witness. It doesn't make any difference. You can argue later on. There is no use for you to examine him. You have examined him enough. You can argue with me whether he claimed partnership from what he said there without arguing with him. He is a successful businessman, but a man with little schooling and you might get him tangled up, not that you try to, into a statement. This is merely evidence to support your theory that there is a contradiction between his attitude now and then. The statement he made there is admissible as argument, but you are arguing with the witness. [76]

The Court: Furthermore, you can call him back as an adverse witness under the rule and examine him as to these things, but let there be some limit ultimately. There is no use to argue with the witness. He would have signed almost anything. I doubt, with the kind of English he speaks, if he understands half of the words the lawyer uses in those documents unless they were explained to him in words of one syllable. He is a man of little schooling. He is an intelligent man but as far as formal schooling, he has had very little. Why con-

(Testimony of James A. Kammerdiner.)

front him with statements his lawyer made, except to have him admit them, which he already has. The object of any marriage is to get along in the world. They start with nothing and they hope to end up as millionaires and unfortunately some end up in the poor house.

By Mr. Mitchell:

Q. In this agreement of 1923, did you and Mrs. Kammerdiner agree to share profits equally and to share losses equally? [77] A. Yes.

Q. And was the purpose of the agreement to use the rights under the rotary jar patent and try to make money? A. Yes, sir.

Q. And you proceeded, then, did you not, to manufacture the rotary jar itself and then rent it?

A. Yes.

Q. To the oil companies who were drilling oil wells? A. Yes.

Q. And that is what you did? A. Yes.

Q. It was out of those patented jars that you made your money? A. Yes.

The Court: Let me ask you this question: You don't mean to say when you said you agreed to share profits or losses, you don't mean to say that you treated her the way you would a partner and every time you had to pay a bill you would say, "Give me half of this."

The Witness: No, sir.

The Court: And you didn't go and say, "Now, I have paid more than my share, now you pay your share"?

(Testimony of James A. Kammerdiner.)

The Witness: No, sir.

The Court: You don't mean anything like that?

The Witness: No.

The Court: What you do mean is this: You made the [78] venture for better or worse, and whatever you acquired, you paid for with money that you both owned?

The Witness: Yes.

The Court: You never drew the line between what was yours and what was hers, and if you lost money you would both go to the bankruptcy court?

The Witness: Yes.

The Court: That is what you meant?

The Witness: Yes.

The Court: You didn't make any agreement by saying, "I will divide the profits and losses," the way you would if you entered into partnership with John Smith?

The Witness: No, sir.

The Court: All right. Go ahead.

If you and your wife disagreed, you didn't expect to go to court to dissolve the partnership, you expected it would be dissolved by divorce or death?

The Witness: Yes.

The Court: That is just to show you the absurdity of trying to take the definition of a partnership and put it in the hands of the witness.

Mr. Mitchell: Counsel will stipulate that the basic patent was issued on October 2, 1923, in the name of James A. Kammerdiner, and was re-issued

(Testimony of James A. Kammerdiner.)

on February 12th, 1924 in the name of James A. Kammerdiner; subsequent to the issuance of the basic patent, there were eight additional [79] patents issued in the name of James A. Kammerdiner on August 4, 1925, one on March 10, 1925, one on February 22, 1927, one on November 22—another on November 22, 1927, one on June 5, 1928, one on May 31, 1932, one on February 18, 1930, one on January 29, 1935; then also that a patent was issued in the name of William W. Frye, patentee, on August 27th, 1929, but the file in that case is entitled “Kammerdiner,” presumably J. A. Kammerdiner; another patent was issued under the name of patentee Samuel P. Powers on October 29, 1929, and the file in that case is entitled “J. A. Kammerdiner”; another patent was issued in the name of patentee S. W. Skeyson, January 19, 1932, and the file in that case is entitled “J. A. Kammerdiner.”

Counsel will stipulate to the rest of these. There are four other patents which show that Kammerdiner is assignee, all issued before the date of the death of the decedent in this case; and sixty other patents owned by Mr. Kammerdiner—sixty other patents issued in the name of other persons prior to the date of death of the decedent and at some time transferred in the name of J. A. Kammerdiner, the time we will have to determine from Mr. Kammerdiner. If any were transferred after death, we are not interested.

(Testimony of James A. Kammerdiner.)

Mr. Bloom: So stipulated. [80]

Mr. Mitchell: Counsel will stipulate that they were all acquired between 1924 and the date of death of the decedent. He will not stipulate whether they were acquired by a firm, or by Tenants in Common or by Joint Tenants, but in the name of J. A. Kammerdiner.

Mr. Smith: Yes.

By Mr. Mitchell:

Q. What funds were used to purchase these other patents that were issued prior to your wife's death and subsequent to the basis patent?

A. May I have a word first before you question me on that?

Most all of those patents, most all of them you called off I have no interest in. There must have been a mistake made in making up that list.

Mr. Smith: Then if we have made a mistake we had better withdraw our stipulation. I took counsel's word for it. I knew nothing about it at all and counsel took the statement of somebody else.

[81]

Mr. Mitchell: The Revenue Agent took the word of Mr. Bloom or someone in your office.

Mr. Smith: No, we just gave him the file. We gave him the patent file.

The Court: Why don't you have him take a look at them.

(Testimony of James A. Kammerdiner.)

By Mr. Mitchell:

Q. Mr. Kammerdiner, are you able to identify these?

A. Some of them, but there are some there that you didn't call that I own.

Q. That you owned before your wife's death?

A. Yes.

Mr. Smith: We didn't call them all.

The Witness: Oh.

Mr. Smith: I suggest that the witness look through the list and find what patents are noted in there that he hasn't any interest in.

The Witness: I have possibly all together 28 or 30 sets of patents.

By Mr. Mitchell:

Q. Were they all acquired before your wife's death or since?

A. I acquired one since.

Q. The balance were acquired before she died? [82]

A. Yes, sir—no, I can't tell you.

Mr. Mitchell: Then maybe we had better take the witness' statement in lieu of the stipulation; and I will ask you then, subsequent to the acquisition of the basic patent, what was the source of the funds with which the other 18 or 19 were purchased?

The Witness: I would say from the profits made on the basic patent.

(Testimony of James A. Kammerdiner.)

By Mr. Mitchell:

Q. The profits made in the rotary jar business?

A. Yes.

Q. How many patents did you purchase from third persons?

A. Oh, I thought you meant a set of jars. Well, there is very much difference in prices on them. Some of them cost a thousand dollars and one of them cost thirty-four thousand dollars.

Q. That is the Knox patent?

A. How? [83]

Q. Was that the Knox patent?

A. No. That was the Pyles patent.

Q. When was that purchased?

A. Along in '32, I believe. No, it was earlier than that.

Q. How about the Knox patent? When was that purchased?

A. I don't know anything about the Knox patent.

Q. The Pyles patent was the most expensive of all so far as the payment was concerned?

A. Yes, but some of the others were very expensive.

Q. Did the money used to purchase that patent come from the profits of the rotary jar business?

A. Yes.

Q. And out of the joint bank account of yourself and wife? A. Yes.

Q. I show you a schedule attached to your 1938

(Testimony of James A. Kammerdiner.)

income tax return, Mr. Kammerdiner, which might refresh your memory on the patents that were purchased. "Amortization of Patents" is the title of the column, and the first one says, "Patent, 1928, 12½ years." That means, I presume, 12½ years to run? A. I believe so.

Q. And the amount of depreciation would be \$201.60? A. Yes.

Q. Being 1/12th, approximately, of the cost; is that correct? Does that refresh your memory on what was paid [84] for some of those patents acquired before your wife's death, acquired by assignment? A. Well—

Mr. Bloom (Interrupting): If it is only the cost you want, we will stipulate that whatever life is shown there times the yearly amortization is the price paid for the patent as shown on that return, if that is what you want.

Mr. Mitchell: That is sufficient. May I read the cost, then, and the date of acquisition?

The Court: All right.

Mr. Mitchell: 1928, 12½ years, cost \$2,520.00; 1930, 15 years, cost \$14,750.00; 1932, 16 years, cost \$1,000.00; 1933, 14-2/7ths years, cost \$5,500.00; 1934, 17 years, \$24,303.40 was the cost; 1935, 17 years, \$2,793.37 cost.

Q. Does that refresh your memory as to the identity of those patents that were purchased at those prices? A. Yes, to a great extent.

Q. What was the source of the funds with which

(Testimony of James A. Kammerdiner.)

they were purchased? Was it from the joint bank account of yours and your wife's or one of the joint bank accounts of yourself and wife?

A. Yes.

Q. And represented profits from the rotary jar business? A. Yes.

Q. In those joint bank accounts that were carried [85] between 1923 and 1935, the date of your wife's death, your wife had the right to draw upon those accounts, draw funds from them without her consulting you, did she not? A. Yes.

Q. And she wasn't limited in any way, shape or form in that respect, was she? A. No.

Q. The same is true of all joint accounts that you ever carried, is it not? A. Yes.

Q. Prior to 1923 as well? A. Yes.

Q. What was the Knox patent? Don't you recall the Knox patent?

A. I never even heard of it.

Mr. Mitchell: With the Court's permission, I desire to offer in evidence, out of order, to save time, the Certificate of Partnership Name.

The Court: That is what I was asking about, the fictitious name.

Mr. Mitchell: Will counsel verify that the notarized acknowledgment of the signature was taken before a Notary Public in the office of plaintiff's counsel?

Mr. Bloom: Yes.

Mr. Mitchell: Your answer is "Yes"?

Mr. Bloom: Yes. [86]

(Testimony of James A. Kammerdiner.)

The Court: Defendant's Exhibit 14.

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 14.")

DEFENDANT'S EXHIBIT No. 14-A

(Erroneously Introduced as No. 14)

PARTNERSHIP NAME

Certificate Required by Section 2466,
California Civil Code

Notice Is Hereby Given that the undersigned, James A. Kammerdiner and Myrtle B. Kammerdiner, have formed a partnership and are transacting business as copartners in the City of Los Angeles, County of Los Angeles, State of California, under the name of "Kammerdiner Rotary Jar Company".

That the full names of all the members of said partnership and their respective places of residence are as follows:

James A. Kammerdiner, 237 South Highland Avenue, Los Angeles, California.

Myrtle B. Kammerdiner, 237 South Highland Avenue, Los Angeles, California.

JAMES A. KAMMERDINER

MYRTLE B. KAMMERDINER

(Legal Affidavit of Publication of above Partnership Name attached.)

Duly Verified.

[Endorsed]: Filed Dec. 29, 1941.

(Testimony of James A. Kammerdiner.)

By Mr. Mitchell:

Q. Was that filed?

The Court: What is the date of that?

Mr. Mitchell: 1931, long after the Joint Tenancy written agreement.

The Court: All right.

By Mr. Mitchell:

Q. You had never filed one of those before that time, had you, Mr. Kammerdiner?

A. No, sir.

Q. Until 1931? A. Yes.

The Court (Interrupting): Q. Were you advised to make such a certificate, Mr. Kammerdiner, you and Mrs. Kammerdiner?

A. No. I think Mrs. Kammerdiner was the one who stood [87] out on that. She was afraid of my relatives in the east and she figured that that would show that we were both together, if they came out here and pounced on us in any way, shape or manner.

Q. This is dated, Mr. Kammerdiner, 1931?

A. Yes.

Q. This certificate? A. Yes.

Q. And counsel has stipulated that it was acknowledged before a Notary Public employed in Mr. Smith's office? A. Yes.

Mr. Smith: Let me suggest that the witness have a chance to read it. Have you had a chance to read it? Do you know what it is?

(Testimony of James A. Kammerdiner.)

Mr. Mitchell: Defendant's Exhibit 14. You might look at it. Read this part up here, the body of it.

Was that the one you were referring to?

A. Yes.

Q. That is what Mrs. Kammerdiner insisted upon?

A. Yes.

Q. She wanted it entitled "Partnership Name"?

A. Kammerdiner Rotary Jar Company.

Q. Did she want it called a partnership?

A. I wouldn't say as to that.

Q. You certify here that you have formed a partner- [88] ship and are transacting business as copartners. What did you mean by that "formed a partnership"?

A. Well, I think any married couple that are married and married right have got a partnership right off the bat.

Q. You merely meant by "partnership" that you were man and wife?

A. Well, we were doing a good business.

Q. You were in business together, were you not?

A. Yes.

Q. That is what you meant, wasn't it, that you were in business together? She was not a mere housewife, was she? She didn't stay home and do nothing in your business?

A. No. She done her work in my house, though, or in our house. We had an office in the house and it took about all of her time to keep up with the bookkeeping.

(Testimony of James A. Kammerdiner.)

Q. That was quite a task at that time?

A. Yes. We were doing quite a little bit of work.

Mr. Mitchell: I offer the petition to the Board of Tax Appeals by Mr. J. Kammerdiner versus the Commissioner, Docket No. 41643, dated November 6th, or rather verified November 21st, 1928, by J. Kammerdiner. It also contains the Government's answer to the petition in the Board case and a few other documents that are immaterial.

Mr. Bloom: Objected to as incompetent, irrelevant and immaterial. [89]

Mr. Bloom. I am not objecting on the ground of order. I am objecting on the ground it is incompetent, irrelevant and immaterial and tending neither to prove or disprove any of the issues in this case.

Mr. Bloom: Yes, your Honor. I have merely to add that the years for which the petition was filed were for years preceding the written document, which has been introduced in evidence. [90]

The Court: The Lewis property. The Lewis property, evidently of separate origin, had been transferred by an agreement of the parties, reduced to writing into a community estate. Now, in that case, as in this, we went way back for years to show what the relationship had been and in that case, as in this, it was shown what these people actually did to give effect, at a certain moment, to what had been going on between themselves without any agreement before. It works both ways in all these cases.

(Testimony of James A. Kammerdiner.)

So whatever weight is to be given to this is a question to be determined later on when you argue the effect, but when people [91] say, "Why, we owned everything in Joint Tenancy," then they have a right to show that during certain periods they claimed partnership, not in the sense in which he claims it now, that is, 50-50 interest during life and survivor take all, but the ordinary words of partnership such as are used in ordinary transactions between strangers. What effect to be given I will determine later on.

Mr. Bloom: My only objection goes to the fact that this is for income tax uses prior to the date of the written agreement. Now, whatever they may have had, even if we assume that they had a very formal partnership agreement written for the years '25, 1926 and 1927, and then they entered into the written agreement which we have introduced in evidence, and under which it is testified the parties owned the property at the time of Mrs. Kammerdiner's death, then whatever they said prior to that time would have no effect. [92]

The Court: We can argue the effect later on. The objection will be overruled and it may be received.

The Clerk: Exhibit 14.

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 14.")

(Testimony of James A. Kammerdiner.)

DEFENDANT'S EXHIBIT No. 14-B

(Erroneously Introduced as No. 14.)

United States Board of Tax Appeals

Docket No. 41643

Mr. J. KAMMERDINER,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION

The above named petitioner hereby petitions for a re-determination of the deficiency set forth by the Commissioner of Internal Revenue, in his notice of deficiency reference (461M) IT:C:P:7, dated October 2nd 1928, Exhibit "A" attached, form 866, reference IT:C:P:7, and statement reference IT:AR: B-10 CEJ 60D, and as a basis of his proceeding alleges as follows:—

1. The petitioner is an individual, (member of partnership) with principal place of business and residence at 237 South Highland Avenue, Los Angeles, California.

2. The notice of deficiency in form of 60 day letter and statement and Agreement as to final determination, marked Exhibits "A" "C" and "B" respectively, were mailed to the petitioner on October 2nd 1928.

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 14-B—(Continued)

3. The taxes in controversy are Income Taxes for the calendar years 1925 and 1926, amounting to \$10,190.26 as per Exhibit "A", \$15,156.17 as per Exhibit "B", \$10,190.26 as per Exhibit "C".

4. The determination of tax set forth in the above exhibits are based upon the following alleged errors—

Respondent contends that a partnership did not exist between petitioner and his wife and has denied protest against his ruling that a partnership could not be allowed.

Petitioner has been taxed on the basis of both incomes of himself and wife being one, which increases his tax as per figures shown on Exhibits "A" and "B", both of which were sent petitioner at the same time, and both of which do not agree as to amount of deficiency.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:—

(a) Ever since petitioner started to work on his patent rotary jar, from which his big increase in income has been derived, his wife has acted as his partner, assisted him in his work, kept the books and accounts of the business taken care of all the correspondence and collection of accounts, and she has been consulted and conferred with by petitioner in practically

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 14-B—(Continued)

every detail of the business. It was understood then, as it has been understood for years prior, that petitioner and his wife were in partnership, and on the Income Tax Return for 1925, there appeared this notation, which was sworn to by petitioner "Both Mr. and Mrs. Kammerdiner work in the business and agreement has been made that Mrs. Kammerdiner receives vested interest in one half of the property and income, making hers separate property."

In support of this statement Exhibits "D" and "E" sworn statements of Mrs. J. Kammerdiner and Mr. A. C. Baimbridge, both having knowledge of the facts, are attached hereto.

Mrs. Kammerdiner did not receive a salary of any definite amount for work done by her in the business, neither did petitioner as both drew out of the business whatever they required and it was agreed between petitioner and his wife that the joint account which they always carried would be continued and that Mrs. Kammerdiner would be entitled to half of the profits of the business in return for the work she performed as office manager.

In support of the above claim that a partnership existed and that the fact that Mrs. Kammerdiner by acting as office manager and doing

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 14-B—(Continued)

part of the work was entitled to be considered a partner, petitioner refers the Board to the following cases which have a bearing upon the present proceedings:—

(b) *L. S. Cobb v Commissioner*. Docket No. 7136 December 9, 1927. Deficiencies for 1920-1921 re-determined.)

During the taxable years petitioners wife was a member of a partnership and her one sixth share of the partnership profits was not taxable to him. (Extract from opinion: Petitioner contends that his wife was a member of the valid partnership and owned a one sixth share of the capital and profits of the business. The Commissioner seizes upon certain provisions of the partnership agreement and insists that the petitioner's wife 'had no interest in or control over the assets of the taxpayer's capital investment in the firm, or the distributable net profits thereof; she in fact was not a partner in the firm.' We find no support of this claim in the partnership agreement. The parties to the agreement were competent to enter into a valid partnership. The bona fides of the transaction is not questioned.

(c) *F. C. Busche v Commissioner*. Docket Nos. 9447, 10202, 10755 March 14, 1928. Deficiencies for 1920-1923 re-determined. The

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 14-B—(Continued)

case above was one where the earnings of the wife of the petitioner were separate property by oral agreement between husband and wife under sections 158, 159, and 160 of the Civil Code of California, and she filed a separate return of her income; held, that respondent erred in adding the wife's earnings to the income reported by petitioner.

The Commissioner in the case of present proceedings has denied that a partnership existed, and against this we have the statement of petitioner and his wife that an oral agreement had been made many years before the partnership income tax return in dispute was prepared. As an Oral agreement was adopted in the case of *F. C. Busche v. Commissioner*, petitioner prays that an Oral agreement between his wife and himself be accepted and partnership return be allowed to remain as presented.

(d) *Elihu Clement Wilson v Commissioner*, *George B. Wilson v Commissioner*, *William W. Wilson v. Commissioner*, Docket Nos. 8500, 8501, 8502. May 2, 1928. Deficiencies for 1919-1920 re-determined. Held, that the Wilson Family Partnership for the years 1919 and 1920 was composed of the three petitioners and their respective wives.

(e) *Charles Brown v Commissioner*, Docket Nos. 13932, 27779, 31427 *Joseph Israel v Com-*

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 14-B—(Continued)

missioner. Docket Nos. 27780 and 31428, October 12th 1928. Deficiencies for 1921-1923 re-determined. Where the two petitioners and their respective wives entered into a contract to carry on a mercantile business and the profits and losses were divided equally, the income derived therefrom by the wives was their separate property and was properly returned and tax paid by them, and it was error to include same in the income of petitioners on the theory that it was community property.

Under the provisions of Section 158 of the Civil Code of California, "a husband and wife may enter into a partnership in California, and if there is any agreement which shows that the intention of the parties is to create a vested interest in the partnership as her separate property, such intention will change the character of their property from community to separate property." This does not say that the agreement must be in writing and as there was an oral agreement between petitioner and his wife, and as your Honorable Board pointed out in the case of *Brown v Commissioner* as referred to in preceding paragraph marked (c) that in none of the cases of *Cobb v Commissioner*, *F. C. Busche v Commissioner* and *Elihue Clement Wilson v Commissioner*, mentioned in paragraphs (b) (c)

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 14-B—(Continued)

and (d) above, did it appear that the wife had contributed any capital from her separate estate, and in the Busche case alone did each appear to have rendered any services, petitioner prays that his case may be considered in the light of the decisions made in the cases referred to above, and that the partnership return submitted by petitioner and his wife be allowed to stand and the deficiencies charged against petitioner be cancelled.

J. KAMMERDINER

Petitioner.

State of California,
County of Orange—ss.

Mr. J. Kammerdiner, being duly sworn, says that he is the Petitioner above named; that he has read the foregoing petition, and is familiar with the statements contained therein, and that the facts stated are true, except as to those facts stated to be upon information and belief and those facts he believes to be true.

J. KAMMERDINER

Petitioner.

Subscribed and sworn to before me this 21st day of November, 1928.

[Seal] **S. RAVENKAMF**

Notary Public in and for County of Orange, State of California.

My Commission Expires Oct. 18, 1930.

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 14-B—(Continued)

Exhibit A

Treasury Department
Washington

Office of
Commissioner of Internal
Revenue

Address Reply to
Commissioner of Internal
Revenue and refer to

October 2, 1928

Mr. J. Kammerdiner
237 South Highland Ave.
Los Angeles, California

Sir:

In accordance with Section 274 of the Revenue Act of 1926 you are advised that the determination of your tax liability for the years 1925 and 1926 disclosed a deficiency of \$10,190.26, as shown in the attached statement.

The section of the law above mentioned allows you to petition the United States Board of Tax Appeals within sixty days from the date of the mailing of this letter for a redetermination of your tax liability. However, if you acquiesce in this determination, you are requested to execute the enclosed Form 866 and forward both original and duplicate to the Com-

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 14-B—(Continued)
Commissioner of Internal Revenue, Washington, D. C.,
for the attention of IT:C:P-7.

Respectfully,

D. H. BLAIR,

Commissioner.

By (Signed) C. B. ALLEN

Deputy Commissioner

Enclosures:

Statement

Form 866

Form 882

Form 7928

Exhibit B

Agreement as to Final Determination
of Tax Liability

IT:C:P-7

This Agreement, made in duplicate under and in pursuance of Section 606 of the Revenue Act of 1928, by and between Mr. J. Kammerdiner, a taxpayer residing at, or having its principal office or place of business at 237 South Highland Avenue, Los Angeles, California and the Commissioner of Internal Revenue;

Whereas, there has been a determination of the tax liability of said taxpayer in respect of Federal income tax for the calendar years 1925 and 1926 in the principal sum of Fifteen Thousand One hundred Fifty Six Dollars and Seventeen Cents (\$15,156.17); and

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 14-B—(Continued)

Whereas, said taxpayer hereby agrees to this determination and consents to the assessment and collection of any deficiency in tax included in the amount of the principal tax liability so determined, together with any penalty or interest applicable thereto as provided by law, and/or to accept any abatement, credit, or refund made in accordance with any interest due thereon as provided by law;

Now, This Agreement Witnesseth, that said taxpayer and said Commissioner of Internal Revenue hereby mutually agree that the principal amount of such liability so determined shall be final and conclusive if and when this agreement is approved by the Secretary of the Treasury or the Undersecretary.

In Witness Whereof, the above parties have subscribed their names to these presents in duplicate

Signed This-----day of-----, 192

.....

Taxpayer

By

Signed -----, 192

(Date)

.....

Commissioner of Internal
Revenue

By

The above agreement has been approved by the

-----.

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 14-B—(Continued)

The approval being specifically enumerated on-Schedule No. -----.

Dated -----

Original and duplicate to be accomplished and returned. cc/1

Exhibit C

STATEMENT

IT:AR:B-10

CEJ-60D

Oct. 2, 1928

In re: Mr. J. Kammerdiner,
237 South Highland Avenue
Los Angeles, California

Years	Deficiency in Tax
1925.....	\$ 4,220.70
1926.....	5,969.56
	<hr style="width: 20%; margin-left: auto; margin-right: 0;"/>
Total	\$10,190.26

Reference is made to the report of the Internal Revenue Agent in Charge, San Francisco, California, covering your tax liability for the years 1925 and 1926, and to your protest submitted under date of June 28, 1928.

Careful consideration has been accorded your protest in connection with the agent's findings.

Your contention that a partnership existed between you and your wife during the years 1925 and 1926 and that your wife held a vested interest in such partnership as her separate property has been denied. As no specific evidence has been furnished to substantiate your contention the total income received by you and Mrs. Kammerdiner during the years in question is considered to be community income taxable to you.

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 14-B—(Continued)

1925

Net income reported.....\$29,782.12

Add:

1. Income transferred from wife's return.. 26,814.22

Net income adjusted.....\$56,596.34

Computation of Tax

Net income subject to surtax..... 56,596.34

Less:

Dividends\$ 578.82

Personal exemption and credit

for dependents 4,700.00 5,278.82

Balance subject to normal tax..... \$51,317.52

Normal tax at 1½% on \$4,000.00.....\$ 60.00

Normal tax at 3% on 4,000.00..... 120.00

Normal tax at 5% on 43,317.52..... 2,165.88

Surtax on \$56,996.34..... 3,889.45

Total Tax\$ 6,235.33

Less:

Credit of 25% for earned net income..... 41.05

Total tax assessable as included on Form 866...\$ 6,194.28

Tax previously assessed 1,973.58

Deficiency in tax\$ 4,220.70

Explanation of Change

1. The reason for the increase in your tax liability has been explained above.

1926

Net income reported on return.....\$37,281.67

Add:

1. Income transferred from wife's return 33,573.84

Total\$70,855.51

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 14-B—(Continued)

Deduct:

2. Error in computation on return.....	999.00
--	--------

Net income subject to surtax.....	\$69,856.51
-----------------------------------	-------------

Less:

Dividends	\$ 737.50
-----------------	-----------

Personal exemption and credit for dependents	4,700.00	5,437.50
---	----------	----------

Balance subject to normal tax.....	\$64,419.01
------------------------------------	-------------

Normal tax at 1½% on \$4,000.00.....	60.00
--------------------------------------	-------

Normal tax at 3% on 4,000.00.....	120.00
-----------------------------------	--------

Normal tax at 5% on 56,419.01.....	2,820.95
------------------------------------	----------

Surtax on \$69,856.51n.....	6,035.61
-----------------------------	----------

Total tax	\$ 9,036.56
-----------------	-------------

Less:

Credit of 25% for earned net income.....	74.67
--	-------

Total tax assessable as included on Form 866....	\$ 8,961.89
--	-------------

Tax previously assessed.....	2,992.33
------------------------------	----------

Deficiency	\$ 5,969.56
------------------	-------------

Explanation of Changes

1. Income reported on your wife's return has been included in your return for reasons explained above.

2. Due to errors in computation, income reported on your return was overstated by \$999.00.

Payment should not be made until a bill is received from the Collector of Internal Revenue for your district, and remittance should then be made to him.

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 14-B—(Continued)

Exhibit "D"

State of California,
County of Orange—ss.

Mrs. James Kammerdiner, wife of Mr. James Kammerdiner, of Los Angeles, California, having first been duly sworn, deposes and says, that she is the wife of Mr. James Kammerdiner, petitioner referred to in attached petition to Board of Tax Appeals, and was wife of said Petitioner during the years of 1925 and 1926. She further states, upon oath, that when petitioner, Mr. James Kammerdiner, started to work on his patent rotary jar, she assisted him in various ways, by counsel, by clerical work and by co-operation in every possible way: she further states, upon oath, that while petitioner was employed out in the oilfields and other places selling his patent rotary jar she was employed in the office and took care of all office details, keeping the books, attending to correspondence and phone calls, and generally acting as inside manager of the firm. She further states that she received no fixed salary for this work and that it was agreed verbally between her and petitioner that she was to get one half of all the profits and that everything was to continue in a joint-account as it had done for years prior to 1925.

She further states that it has always been her

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 14-B—(Continued)
understanding that petitioner and herself were in
partnership in the patent rotary jar business.

MRS. JAMES KAMMERDINER

Subscribed and sworn to before me this 21st day
of November 1928.

[Seal]

S. RAVENKAMF

Notary Public in and for County of Orange, State
of California.

My Commission Expires October 18, 1930.

Exhibit "E"

State of California,
County of Los Angeles—ss.

Mr. A. C. Baimbridge, of Los Angeles, California,
having first been duly sworn, deposes and says, that
he is now and was during the complete years of
1925 and 1926, employed by Mr. and Mrs. James
Kammerdiner, and that it has always been his
understanding that both Mr. and Mrs. Kammerdiner
were partners in the business of manufacturing and
selling the patent rotary jars for use in the oilfields.
He further states that during the years 1925 and
1926 he was in and out of the office of the firm, sev-
eral times a week, on the average, and always con-
sidered Mrs. James Kammerdiner a member of the
firm in the capacity of Office of Inside Manager.
He states, upon oath, that he knows that she took
care of the books and accounts, answered phone calls
and correspondence and acted in every possible way

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 14-B—(Continued)
as a member of the firm with authority and as one
who had a real interest in the business.

A. C. BAIMBRIDGE

Subscribed and sworn to before me, this 20th day
of November 1928.

[Seal]

H. F. OVERBECK

Notary Public in and for County of Los Angeles,
State of California.

My Commission Expires May 10, 1932.

United States Board of Tax Appeals

Docket No. 41643

J. KAMMERDINER,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

ANSWER

The Commissioner of Internal Revenue by his
attorney, C. M. Charest, General Counsel, Bureau
of Internal Revenue, for answer to the petition of
the above-named taxpayer admits and denies as
follows:

1. Admits the allegations contained in paragraph
1 of the petition, except the allegation that the peti-
tioner is a member of a partnership, which is denied.
2. Admits the allegation contained in paragraph
2 of the petition.

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 14-B—(Continued)

3. Admits the allegations contained in paragraph 3 of the petition.

4. Denies that the Commissioner erred in the determination of the said deficiency as alleged in paragraph 4 of the petition.

5. Admits that the Commissioner denies that a partnership existed, but denies the remaining allegations of fact contained in paragraph 5 of the petition.

Denies generally and specifically each and every allegation contained in the petition of the above-named taxpayer and hereinbefore expressly admitted, qualified or denied.

Wherefore, it is prayed that the appeal be denied.

Signed C. M. CHAREST,

General Counsel, Bureau of
Internal Revenue

Of Counsel:

T. M. MATHER,

Special Attorney, Bureau of Internal
Revenue.

[Endorsed]: Filed Dec. 29, 1941.

Mr. Mitchell: I now offer in evidence an authenticated copy of a petition of the plaintiff before the United States Board of Tax Appeals, number of Docket, 46,555, relating to income for the taxable

(Testimony of James A. Kammerdiner.)
year 1927, verified by the plaintiff on the 3rd of
December, 1929.

Mr. Bloom: The same objection.

The Court: All right. Overruled, and it may be
received in evidence.

The Clerk: Defendant's 15.

(The document referred to was received in
evidence and marked "Defendant's Exhibit No.
15.")

DEFENDANT'S EXHIBIT No. 15

United States Board of Tax Appeals

Docket No. 46555

Mr. J. KAMMERDINER

Petitioner

v

COMMISSIONER OF INTERNAL REVENUE

Respondent

PETITION

The above named petitioner hereby petitions for
a re-determination of the deficiency set forth by the
Commissioner of Internal Revenue, in his notice of
deficiency reference 60 day letter, herewith attached,
dated Oct. 14, 1929, and statement reference IT:
AR:B-8 WFF dated Oct. 14, 1929, and as a basis
of his proceeding alleges as follows:—

1. The petitioner is an individual (member
of partnership) with principal place of busi-

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 15—(Continued)
ness and residence at 237 South Highland Avenue, Los Angeles, California.

2. The notice of deficiency in form of 60 day letter and statement and Agreement as to final determination, were received by Petitioner on or about the 17th day of October 1929, being dated October 14th 1929. Copies attached marked Exhibits "A" and "B".

3. The taxes in controversy are Income Tax for the calendar year year 1927, amounting to \$9,619.95.

4. The determination of tax set forth in the above exhibits are based upon the following alleged errors—

Respondent contends that a partnership did not exist between petitioner and his wife and has denied protest against his ruling that a partnership could not be allowed, claiming that no partnership books are kept showing the capital accounts, partnership agreement, or separate accounts, and holding that petitioner's wife did not hold a vested interest in the partnership, and that the total income is taxable on a joint return.

5. The facts upon which petitioner relies as the basis of this proceeding are as follows—

(a) Ever since he started to work on his

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 15—(Continued)

patent rotary jar, from which patent his big increase in income has been derived, his wife acted as his partner in his business as well as in his home, assisted him in his work, kept the books and accounts of the business, taken care of all the correspondence and collection of accounts, and states further that his wife has been consulted and conferred with by petitioner in practically every detail of the business. It was understood then, as it had been understood for years prior to that time that petitioner and his wife were in partnership, and on the Income Tax Return for 1925 there appeared this notation, which was sworn to by Petitioner "Both Mr. and Mrs. Kammerdiner work in the business and agreement has been made that Mrs. Kammerdiner receives vested interest in one half of the property and income making hers separate property."

In support of this statement Exhibits "C" and "D" sworn statements of Mrs. J. Kammerdiner and Mrs. A. C. Bainbridge, both possessing knowledge of the facts, are attached hereto.

Mrs. Kammerdiner did not receive a salary of any definite amount for work done by her in the business, neither did petitioner as both drew out of the business whatever

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 15—(Continued)

they required and it was agreed between petitioner and his wife that the joint account which they had always carried in Bank would be continued and that Mrs. Kammerdiner would be entitled to half of the profits of the business in return for the work she performed as office manager.

In support of the above claim that a partnership existed, even though there was no signed partnership agreement, apart from the notation on Income Tax Return for 1925, made in March 1926, and in support of the claim that the fact that Mrs. Kammerdiner by acting as office manager and doing part of the work of the business was entitled to be considered a partner, petitioner refers the Board to the following cases which have a bearing upon the present proceedings:—

(b) *L. S. Cobb v Commissioner*. Docket No. 7136 December 9, 1927. Deficiencies for 1920-1921 re-determined)

During the taxable years petitioner's wife was a member of a partnership and her one sixth share of the partnership profits was not taxable to him. (Extract from opinion: Petitioner contends that his wife was a member of the valid partnership and owns a one sixth share of the capital and profits of the business. The Commissioner seizes upon

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 15—(Continued)

certain provisions of the partnership agreement and insists that the petitioner's wife 'had no interest in or control over the assets of the taxpayer's capital investment in the firm, or the distributable net profits thereof; she, in fact was not a partner in the firm.'" We find no support of the claim in the partnership agreement. The parties to the agreement were competent to enter into a valid partnership. The bonafides of the transaction is not questioned.

(c) *F. C. Busche v Commissioner*, Docket Nos. 9447, 10202, 10755, March 14, 1928. Deficiencies for 1920-23 re-determined. The case above was one where the earnings of the wife of the petitioner were separate property by oral agreement between husband and wife under sections 158, 159, and 160 of the Civil Code of California, and she filed a separate return of her income; held, that respondent erred in adding the wife's earnings to the income reported by petitioner.

The Commissioner in the case of present proceedings has denied that a partnership existed, and against this we have the statement of petitioner and his wife that an oral agreement had been made many years before the partnership Income Tax Return in this proceeding was prepared. As an Oral agree-

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 15—(Continued)

ment was accepted in the case of F. C. Busche v Commissioner, above referred to, petitioner prays that an Oral agreement between his wife and himself supported by sworn statement made on Income Tax Return of 1925, be accepted and partnership return be allowed to remain as presented.

(d) Charles Brown v. Commissioner, Docket Nos. 13932, 27779, 31427 Joseph Israel v. Commissioner, Docket Nos. 27780 and 31428, October 12th, 1928. Deficiencies for 1921-1923 re-determined. Where the two petitioners and their respective wives entered into a contract to carry on a mercantile business and the profits and losses were divided equally, the income derived therefrom by the wives was their separate property and was properly returned and tax paid by them, and it was error to include same in the income of petitioners on the theory that it was community property.

Under the provisions of Section 158 of the Civil Code of California, a husband and wife may enter into a partnership in California, and if there is any agreement which shows that the intention of the parties is to create a vested interest in the partnership as her separate property such intention will change the character of their property from community to

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 15—(Continued)

separate property. This does not say that the agreement must be in writing, and as there was an oral agreement between petitioner and his wife, and as your Honorable Board pointed out in the case of *Brown v. Commissioner* as referred to in preceding paragraph, that it was error to include wife's income with income of petitioner, and as in none of the cases of *Cobb v. Commissioner*, *F. C. Busche v. Commissioner*, mentioned in paragraphs (b) and (c) above, does it appear that the wife contributed any capital from her separate estate, and in the *Busche* case alone did wife appear to render any service, and as in the present case there was an oral agreement between petitioner and his wife, and his wife did actually render considerable service, petitioner prays that his case may be considered in the light of the decisions made in the cases referred to above, and that the partnership return submitted by petitioner and his wife be allowed to stand and the deficiencies charged against petitioner be cancelled.

Petitioner further prays that if the partnership is not allowed to stand for Income Tax purposes, even though he and his wife recognize it for other purposes, then, as it is permissible for husband and wife in California to send in separate returns on account of property in

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 15—(Continued)

California acquired after marriage being Community Property, he prays that the return as submitted be allowed to stand as it would be the same in every respect if submitted as community property.

JAMES KAMMERDINER,
Petitioner.

State of California,
County of Orange—ss.

Mr. J. Kammerdiner, being duly sworn, deposes and says that he is the petitioner above named; that he has read the foregoing petition, and is familiar with the statements contained therein and that the facts stated are true, except as to those facts stated to be upon information and belief and those facts he believes to be true.

JAMES KAMMERDINER,
Petitioner.

Subscribed and sworn to before me this 3rd day of December, 1929.

DAN O'HANLON,
Notary Public in and for the County of
Orange, State of California.
My commission expires July 13, 1930.

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 15—(Continued)

“Exhibit A”

Treasury Department

Washington

Office of Commissioner of Internal

Revenue.

Oct. 14, 1929.

Mr. James Kammerdiner,
237 South Highland Avenue,
Los Angeles, California.

Sir:

In accordance with Section 274 of the Revenue Act of 1926, you are advised that the determination of your tax liability for the years 1927 discloses a deficiency of \$9,619.95, as shown in the statement attached.

The section of the law above mentioned allows you to petition the United States Board of Tax Appeals within sixty days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter for a redetermination of your tax liability.

However, If You Do Not Desire to Petition, you are requested to execute the inclosed Form 866 and forward both original and duplicate to the Commissioner of Internal Revenue, Washington, D. C. for the attention of IT:C:P-7. The signing of this agreement form will expedite the closing of your return by permitting an early assessment of any

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 15—(Continued)
 deficiencies and preventing accumulation of interest charges, since the interest period terminates thirty days after filing the agreement form, or on the date assessment is made, whichever is earlier; Whereas If No Agreement Is Filed, interest will accumulate to the date of assessment of the deficiencies.

Respectfully,
 ROBT. H. LUCAS,
 Commissioner.

By (signed) DAVIS BURNET
 Deputy Commissioner.

Inclosures:

Statement
 Form 866
 Form 882

“Exhibit B”

Statement from Commissioner.

IT:AR:B-9
 WFF.

Oct. 14, 1929.

In re: Mr. James Kammerdiner,
 237 South Highland Avenue,
 Los Angeles, California.

Tax Liability

Year	Corrected Tax Liability	Tax Previously Assessed	Deficiency
1927	\$14,006.55	\$4,386.60	\$9,619.95

The report of the Internal Revenue Agent in Charge at San Francisco, California, a copy of which has been furnished you, which explains in detail the determination of the deficiency has been reviewed and approved by this office.

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 15—(Continued)

Net income reported.....\$45,963.74

Add:

1. Additional income from business.....\$45,963.74

\$91,927.48

Less:

2. Contributions allowed 400.00

Net income as adjusted.....\$91,527.48

Explanation of Adjustments

1. Gross income reported has been increased under Article 31, Regulations 69, \$45,027.48 which represents income from your business which was reported on Mrs. Kammerdiner's return since an investigation of your case discloses that no partnership books are kept showing the capital accounts, partnership agreement, or separate bank accounts. It is, therefore, held that your wife did not hold a vested interest in the partnership, and that the total income is taxable on a joint return.

2. Contributions in the amount indicated above have been allowed as a deduction from gross income under Article 251, Regulations 69.

Computation of Tax.

Net income subject to surtax..... \$91,527.48

Less:

Dividends 202.42

Personal exemption and credit

for dependents 4,700.00 4,902.42

Balance subject to normal tax.....\$86,625.06

Normal tax at 1½% on \$4,000.....\$ 60.00

Normal tax at 3% on 4,000.00 120.00

Normal tax at 5% on \$78,625.06 3,931.25

Surtax on \$91,527.48..... 10,050.22

Total tax\$14,161.47

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 15—(Continued)

Credit for earned net income.....	\$ 154.92
Total tax assessable.....	\$14,006.55
Tax previously assessed.....	4,386.60
Deficiency	\$ 9,619.95

Inasmuch as Item One is the only issue, and is now pending before the United States Board of Tax Appeals for the years 1925 and 1926 formal notice of deficiency is mailed you at this time without affording you an opportunity for a hearing before the Unit.

Payment should not be made until a bill is received from the Collector of Internal Revenue for your district, and remittance should then be made to him.

Exhibit "C"

State of California,
County of Orange—ss.

Mrs. James Kammerdiner, wife of Mr. James Kammerdiner the Petitioner in case of Mr. J. Kammerdiner V. Commissioner of Internal Revenue concerning Income Tax for calendar year 1927, having been first duly sworn, deposes and says, That she is the wife of Mr. James Kammerdiner petitioner referred to in attached petition to Board of Tax Appeals, and was wife of said petitioner during the years 1925, 1926, and 1927, years for which Income Tax Returns on partnership basis have been prepared and submitted. She further states, upon oath, that when petitioner, Mr. James Kammerdiner, started to work on his patent rotary jar, as far back as the year 192..., she assisted him in every way possible, by counsel, by clerical work and by co-operation; she further states, upon

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 15—(Continued)
oath, that while petitioner was employed out in the oilfields and other places selling his patent rotary jar, she was employed in the office and took care of all office details, keeping the books, attending to correspondence and phone calls, attending to sending out statements and collecting accounts, and generally acting as inside manager of the business. She further states upon oath, that she received no fixed salary for this work as it was understood and verbally agreed upon between her and petitioner that she had and was entitled to one half interest in the business and one half of the profits of the business, and that as there never had been any signed agreement between her and petitioner, her husband, it being always understood that they were partners in every sense of the word, it was verbally agreed to continued everything in joint names and account in banks in joint names, as has always been done in the past.

She further states, upon oath, that it has always been her understanding that petitioner and herself were in partnership in the patent rotary jar business as in everything else since marriage.

MRS. JAMES KAMMERDINER

Subscribed and sworn to before me this 3rd day of December 1929.

DAN O'HANLON

Notary Public in and for County of Orange,
State of California.

My commission expires July 13, 1930

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 15—(Continued)

“Exhibit D”

State of California,
County of Los Angeles—ss.

Mr. A. C. Bainbridge, of Los Angeles, California, having first been duly sworn, deposes and says, *Tat* he is now and was during the years of 1925, 1926 and 1927, employed by Mr. and Mrs. James Kammerdiner, Mr. James Kammerdiner being the petitioner in petition proceedings attached hereto, and that it has always been his understanding ever since he started to work for Mr. and Mrs. James Kammerdiner, that Mr. and Mrs. James Kammerdiner were partners in the business of manufacturing and selling the patent rotary jars patented by Mr. James Kammerdiner, assisted by Mrs. James Kammerdiner, for use in oilfields.

He further states, also upon oath, that during the years 1925, 1926, and 1927 he was in and out of the office of the firm several times a week, on the average, and always considered Mrs. James Kammerdiner a member of the firm in the capacity of office or Inside manager. He also states, upon oath, that he knows that she took care of the books and accounts, answered correspondence and took charge of the business in the absence of Mr. James Kammerdiner, and acted in every possible way as a mem-

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 15—(Continued)
ber of the firm with authority and as one who had
a real interest in the business.

A. C. BAIMBRIDGE

Subscribed and sworn to before me this 4th day
of December 1929.

H. F. OVERBECK

Notary Public in and for County of Los An-
geles, State of California.

My commission expires May 16, 1932.

United States Board of Tax Appeals

Docket No. 46555

J. KAMMERDINER,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

ANSWER

The Commissioner of Internal Revenue by his
attorney, C. M. Charest, General Counsel, Bureau
of Internal Revenue, for answer to the petition of
the above-named taxpayer admits and denies as
follows:

1. Admits the allegations contained in para-
graph 1 of the petition.
2. Admits the allegations contained in para-
graph 2 of the petition.

(Testimony of James A. Kammerdiner.)

Defendant's Exhibit No. 15—(Continued)

3. Admits the allegations contained in paragraph 3 of the petition.

4. Denies that the Commissioner erred in the determination of the said deficiency as alleged in paragraph 4 of the petition.

5. (a), (b), (c) and (d). Denies the allegations of fact contained in subdivisions (a), (b), (c) and (d) of paragraph 5 of the petition.

Denies generally and specifically each and every allegation contained in the petition of the above-named taxpayer not hereinbefore expressly admitted, qualified or denied.

Wherefore, it is prayed that the appeal be denied.

(Signed) C. M. CHAREST

General Counsel, Bureau of
Internal Revenue

Of Counsel:

T. M. MATHER,

Special Attorney,

Bureau of Internal Revenue.

[Endorsed]: Filed Dec. 29, 1939.

By Mr. Mitchell:

Q. According to this petition, from page 2, this [93] appears: "Mrs. Kammerdiner did not receive a salary of any definite amount for work done by her in the business, neither did petitioner as both

(Testimony of James A. Kammerdiner.)

drew out of the business whatever they required and it was agreed between petitioner and his wife that the joint account which they had always carried in the bank would be continued and that Mrs. Kammerdiner would be entitled to half of the profits of the business in return for the work she performed as Office Manager."

That was true, was it not?

Mr. Smith: I think that instead of reading something and asking the witness about it, I think the witness should have an opportunity to read it and study it, if your Honor please.

The Court: He has a right to ask him if that is what he swore to.

By Mr. Mitchell:

Q. Did you understand what I read?

A. I understand it, but I don't understand the question you have tied up with it.

The Court: He is reading a statement to you wherein you say that your wife was Office Manager and received no salary. He wants to know if that statement, which was made under your signature, was true at that time.

The Witness: Yes. She didn't receive any salary.

By Mr. Mitchell:

Q. And did you and Mrs. Kammerdiner agree that the [94] joint accounts which you had always carried, would be continued in the rotary jar business? A. Yes.

(Testimony of James A. Kammerdiner.)

Q. And that Mrs. Kammerdiner would be entitled to half of the profits of the business in return for the work she performed as Office Manager?

A. Well, that sounds kind of odd to me because I don't know why either her or I would put that out.

Q. You question that now? A. I would.

Q. Now, I call your attention also to page 1 in which you state: "It was understood then—" that is the time of the agreement, referring to '23—"as it had been understood for years prior to that time, that petitioner and his wife were in partnership, and on the income tax return—" and so forth.

That is correct, is it not, that it had been understood between you and your wife for years that you had been in partnership, or isn't it?

A. On what date is that?

Q. This was——

A. It has been for years, anyhow. Ever since we have been first married.

Q. Let's read it here.

"The facts upon which the petitioner relies as the basis of this proceeding are as follows: [95]

"(a) Ever since he started to work on his patent rotary jar, from which patent his big increase in income has been derived, his wife has acted as his partner in his business as well as in his home, assisted him in his work, kept the books and ac-

(Testimony of James A. Kammerdiner.)

counts of the business, taken care of all the correspondence and collection of accounts—" that is all correct so far? A. Yes.

Q. "And states further that his wife has been consulted and conferred with by petitioner in practically every detail of the business."

Is that correct?

A. Well, not all the details.

Q. Some of the outside details you handled personally?

A. Yes, around the shops and the wells.

Q. Where it took an expert in the field?

A. I done the work in the field.

Q. Then it goes on: "It was understood then—" I assume you refer to the origin of the rotary jar business—"as it had been understood for years prior to that time—"

Was that the understanding for years prior; is that correct?

A. What is the question, please?

Q. This arrangement with your wife that was made in 1923. [96] A. Yes.

Q. Is that the same as existed for years prior to that? A. Yes.

Q. I now call your attention to Defendant's Exhibit 15 at the bottom of the first page in which this appears—this also is verified by you, Mr. Kammerdiner—I mean it was sworn to by you—"Ever since he started to work—" you are referring to yourself—"on his patent rotary jar, from which

(Testimony of James A. Kammerdiner.)

patent his big increase in income has been derived, his wife has acted as his partner in his business as well as in his home."

Was that correct?

A. Well, our office was in our home.

Q. Yes.

A. And she hired outside help to take care of her work in the house. She was busy in the office.

Q. And was also busy in the office; is that what you say? A. I say she was busy in the office.

Q. Well, you say here "His wife has acted as his partner in his business as well as in his home."

Is that correct?

A. Yes, that is correct.

Q. Both? A. Yes. [97]

Q. Now, I call your attention to your wife's affidavit attached to your petition. I am referring to Exhibit 15, Defendant's, sworn to December 3, 1929 by Mrs. James Kammerdiner, to this portion of her affidavit:

"She further states, upon oath, that she received no fixed salary for this work as it was understood and verbally agreed upon between her and petitioner that she had and was entitled to one-half interest in the business and one-half of the profits of the business."

Is that correct so far as I have gone?

A. Yes, that is all correct.

Q. "And that as there never had been any

(Testimony of James A. Kammerdiner.)

signed agreement between her and the petitioner, her husband, it being always understood that they were partners in every sense of the word, it was verbally agreed to continue everything in joint names and accounts in banks in joint names as had [98] always been done in the past."

Is that correct?

A. Yes.

Q. "She further states, upon oath, that it has always been her understanding that petitioner and herself were in partnership in the patent rotary jar business as in everything else since marriage."

A. I would say that was right.

Mr. Mitchell: The defendant offers out of order the reporter's transcript of the proceedings in the same case. The two cases were consolidated to which Defendant's Exhibits 14 and 15 refer, the same cases consolidated for trial and it involves the income tax years of 1925, '26 and '27.

Mr. Bloom: The same objection is made.

The Court: I will not allow that. You can read any portion you want. You can't throw at me the entire transcript. Let me see how many pages there are. I don't want all the testimony that has been received there unless there is——

Mr. Mitchell (Interrupting): It relates to the issue in this case.

The Court: We can't re-try it. On that basis I will sustain the objection to this. I will allow you to call my attention to anything implying a

(Testimony of James A. Kammerdiner.)

contradiction. You are making a very excessive record for somebody here. It isn't customary to take another proceeding and have all of the record brought up. It is only anything that is contradictory [99] of the position taken now that is admissible. I will stay all night, if necessary, and you can read to me the portions that you deem are contradictory, but I am not going to take the entire transcript and read it through.

Mr. Mitchell: The purpose, of course, is to show admissions and declarations.

The Court: You can go ahead and pick them out.

Mr. Mitchell: And to support the Government's defense that the factual issues involved in this case and in that case are identical and that it has been adjudicated.

The Court: There is no adjudication of prior years, by the Board of Tax Appeals, that is binding upon this Court.

Mr. Mitchell: As to the fact of whether or not there was a partnership?

The Court: That is not binding on this Court. It depends on the proceeding in which they arise.

Mr. Mitchell: Might I cite a Supreme Court case?

The Court: I am not interested in that. Later on I will do that, but it doesn't say that I am bound by the evidence that was produced there.

Mr. Mitchell: No.

The Court: Then pick out the things you want

(Testimony of James A. Kammerdiner.)

to read and read them, if they are material, so counsel can object. I don't want to be caught on appeal with an entire record, the contents of which I don't know anything about, by allow- [100] ing it to go in. There may be all sorts of erroneous testimony received there. The Board of Tax Appeals isn't a court. They are not bound by the rules of evidence; they may hear hearsay testimony.

Mr. Mitchell: They are bound by the rules of evidence as existing in the District of Columbia.

The Court: I don't know as they are governed by those rules.

Mr. Mitchell: That is the rule of the Board, if I am not mistaken.

The Court: Well, administrative bodies can change their rules of evidence tomorrow. They are bound by nothing but their own will, limited by the rule that they shouldn't be arbitrary, which subjects them to review.

I am a great believer in administrative tribunals, but I am also a believer in the independence of legal tribunals not to be bound by adjudications of others, except where the law makes them so.

I will let you show me if the Board of Tax Appeals found that they were partners in 1928, but I am not bound by that to find that they were partners at the time of death. I will let you show me that in your brief, if you want to argue, but for the present read to me the portions you say are admissible as admissions against interest. Don't

(Testimony of James A. Kammerdiner.)

do that as a part of this cross examination. Finish the cross examination and then offer that as a part of your case. [101]

Mr. Mitchell: Your Honor apparently misconstrues the Government's contention. We are not contending that it was a partnership at the time of death. We are contending that the wife had an interest in the property at the time of death.

The Court: All right.

Mr. Mitchell: To the extent of one-half. The taxpayer contends that she didn't have any interest in the property.

The Court: I understand your position. He says all this is a partnership, with a right of survivor attached to it, and you say it isn't.

Mr. Mitchell: I don't say that. Neither do I say there was no joint tenancy.[102]

The Court: All right. Point out what I have asked you to pick out and finish the cross examination of this witness, and then as a part of your case you can read the portions in that transcript which show contradiction. I am not going to take the entire record. It is too dangerous. [103]

The Court: After you read those into the record you may ask. You don't need to ask him any question as to whether he said that or not. It is stipulated that he said what is in the record and that he believed the answer to be true as of the time he gave them?

Mr. Mitchell: It is so stipulated.

(Testimony of James A. Kammerdiner.)

The Court: You stipulate he spoke the truth under oath, don't you?

Mr. Smith: Oh, yes. There is no doubt about that so [104] far as his testimony is concerned.

The Clerk: Sixteen.

Mr. Mitchell: That will be 16 for identification.

The Court: All right. It may be received for identification.

(The document referred to was received and marked "Defendant's Exhibit No. 16 for identification.")

By Mr. Mitchell:

Q. There was no understanding between you and your wife in about 1923 that if you made any money you would divide it, was there?

A. No, there was no division made of that kind that I know of.

Q. And there was no agreement with your wife that if you lost any money you would stand the losses equally, was there? A. No.

Mr. Bloom: Just a minute. Is counsel questioning from the document in his hand?

Mr. Mitchell: I am asking the witness questions.

Mr. Bloom: Is that from the transcript that we were just discussing?

Mr. Mitchell: It may be.

The Court: The objection will be sustained. The witness has already stated what the understanding was, the sense in which losses and profits were to

(Testimony of James A. Kammerdiner.)

be divided as [105] between him and his wife; were to be shared, I mean.

Mr. Mitchell: I believe those answers were given in answer to leading questions of the Court.

The Court: That is all right. The Court has the right to ask leading questions, especially when counsel tries to take a legal definition and put it to the mouth of a layman what would be a legal definition of partnership, which is not fair. That is why I came to the witness' defense because I knew what the facts were, what you were trying to do. You were trying to define the partnership in the sense of the Code, which isn't fair to do with a lay witness. You can read from the transcript the contradictory statements without asking him questions.

By Mr. Mitchell:

Q. Coming back to the patent, Mr. Kammerdiner, how did you happen to have that patent, that invention patented?

The Court: Objection will be sustained; it is immaterial. He didn't steal it; it was his own. He had a right to give it to his wife.

Mr. Mitchell: May I make my offer of proof—

The Witness: (Interrupting): No.

Mr. Mitchell (Continuing): —of what I want to bring out?

The Court: Offers of proof are not allowed. They are condemned by the Court.

Mr. Mitchell: What is that? [106]

(Testimony of James A. Kammerdiner.)

The Court: Offers of proof are condemned by the Court. Your question should be so clearly stated that it would imply what you are seeking.
By Mr. Mitchell:

Q. Did Mrs. Kammerdiner assist you in procuring the patent? A. Yes.

Q. Isn't it true that the procurement of the patent was Mrs. Kammerdiner's idea originally?

A. No.

Mr. Bloom: Objected to as incompetent, irrelevant and immaterial.

The Court: Objection sustained.

By Mr. Mitchell:

Q. Did Mrs. Kammerdiner procure an attorney to perfect your patent? A. Yes.

Mr. Bloom: Objected to as incompetent, irrelevant and immaterial.

The Court: Objection sustained.

By Mr. Mitchell:

Q. Did you turn over all the matters of procuring the patent over to your wife?

Mr. Bloom: Objected to as incompetent, irrelevant and immaterial.

The Court: Objection sustained. [107]

By Mr. Mitchell:

Q. Did your wife volunteer to handle all of the matters in connection with the procurement of the patent?

Mr. Bloom: Objected to as incompetent, irrelevant and immaterial.

(Testimony of James A. Kammerdiner.)

The Court: Objection sustained.

By Mr. Mitchell:

Q. Before you procured patents, did you attempt to obtain a partner outside of your wife?

Mr. Bloom: Objected to as incompetent, irrelevant and immaterial.

The Court: Objection sustained.

Mr. Mitchell: I mean a partner in respect to the promotion of the patent rights.

The Court: The objection is sustained, not proper cross examination. From now on I will limit it strictly to cross examination. I wouldn't admit that on direct, either, but I am going to limit it strictly. You have examined this man sufficiently without going into the details of the patent. You are dealing with husband and wife, not with two partners. [108]

The Court: In the ordinary sense.

Mr. Mitchell: May I ask your Honor a question?

The Court: No, I don't want the question. I merely said you are going too far in this cross examination and I am going to stop it. That is all there is to it.

By Mr. Mitchell:

Q. You testified on direct examination, Mr. Kammerdiner, that you never made any assignment of these patents to anyone?

A. No, sir.

(Testimony of James A. Kammerdiner.)

Q. You never even made the formal assignment to your wife? A. No, sir.

Q. Did you and your wife ever make an assignment of the patent to anyone? A. No, sir.

Q. Did you or your wife ever make an assignment of rights to manufacture or rent under the patent rights?

A. Yes. We licensed, and we gave the California [109] National a foreign right to sell them outright, but in the United States it was renting.

Q. All foreign rights in all countries?

A. All foreign rights.

Q. For a consideration? A. How?

Q. For a consideration? You were paid something for that? A. Oh, yes.

Q. Did that go into the joint account?

A. Yes.

Q. The receipts? A. Yes.

Mr. Mitchell: That is all. [110]

Redirect Examination

Q. Mr. Kammerdiner, I call your attention to Defendant's Exhibit No. 14 in relation to the Fictitious Name Certificate. A. Yes.

Q. Counsel examined you in relation to this. It had to do with the rotary jar business, the Kammerdiner Rotary Jar Company? A. Yes.

Q. Do you remember who prepared that for you and what was said at the time you prepared it?

A. The only thing I remember about that, you know I was to three or four different attorneys.

(Testimony of James A. Kammerdiner.)

Q. Well, let me ask you this: Did not Mr. Vogel in our office prepare this and suggest——

A. (Interrupting) I believe he spoke about it. We needed that in case of a lawsuit, if somebody attacked us.

Q. In other words, if you sued for an infringement of the patent in your name, it was necessary that you file this in order to sue in the name of the Kammerdiner Rotary Jar? A. Yes.

Q. That was the circumstance? [111]

A. Yes. That is the only thing that I knew about it. I believe Mr. Vogel was the one that set that up.

Q. Who set it up? A. Yes.

Q. Did you know in 1923 or 1928 the difference, what you might call the technical difference between community property and Joint Tenancy property, partnership property or partnership, or other property?

A. After all of the wrestling I have gone through, I don't know the difference today.

Q. Not even today?

A. No. I have no idea of it.

Q. Mr. Kammerdiner, the money that was realized from your rotary jar enterprise was used for living, or is represented in joint tenancy property that Mrs. Kammerdiner and you left?

A. Yes.

The Court: By the way, you didn't at the end of the year take a profit and loss statement with yourself and your wife?

(Testimony of James A. Kammerdiner.)

The Witness: No.

The Court: And say, "My dear, this is yours"?

The Witness: No.

The Court: "Do as you please with it and I will take this"?

The Witness: No. [112]

By Mr. Smith:

Q. Mr. Kammerdiner, when you executed and filed Exhibit No. 14, which we term a Fictitious Name Certificate, did you and Mrs. Kammerdiner make any agreement at that time other than any other agreement you had before? A. No.

Q. There was no understanding different than you ever had? A. No.

Q. None at all? A. No change.

Q. Mr. Kammerdiner, in your Federal Estate Tax return, Government's Exhibit 12, that was prepared by attorneys known as Chase & Chase?

A. Chase & Chase.

Q. Who were your attorneys at that time?

A. Barnes, Chase & Chase.

Q. Barnes, Chase & Chase? A. Yes.

Q. Our office gave you no advice or counseled you at all in relation to that return?

A. Not a bit, no, sir.

Q. We didn't come into the picture until after the Government had audited that return?

A. Yes.

Mr. Bloom: At this time, your Honor, I offer in evi- [113] dence, and this is in rebuttal of the

(Testimony of James A. Kammerdiner.)

contention made by the Government, as to estoppel by reason of the 1926, '27 and '28 representations. I am making the offer at this time for the reason that if Mr. Mitchell should rest, we wouldn't have anything to rebut upon his case, so that not knowing whether he is going to call any witness or not, I would like to introduce them at this time.

The Court: Well, go ahead.

Mr. Mitchell: I have no objection.

The Court: Gentlemen, in some respects I am strict. I am strict against wasting the time but in other respects, especially when we try a case without a jury, I am very liberal. I don't care when the thing comes in; you can put it in now if you wish.

Mr. Mitchell: May I state the Government's objection?

Counsel states that this is offered in rebuttal of the Government's estoppel contention, which is based upon representations relied upon by the Government to its detriment. The representations were made in respect of 1925, '26 and '27. This evidence relates to the year 1928 and goes to establish, as I understand it, the fact that in 1929, when the 1928 tax was being considered by the Bureau, some Revenue Agent in the Income Tax Division of the Revenue Agent's Office had a copy of the 1928 so-called Joint Tenancy Agreement in his possession.

I will stipulate that that agent had such an agreement [114] in his possession and it was a Govern-

(Testimony of James A. Kammerdiner.)

ment agent in the employ of the Government, but I object on the ground that the Government simply can't know what every agent has in his possession back in 1929.

The Court: That is all right. I wouldn't make any comment on that. Let me take a look at that.

Mr. Bloom: This is our protest, Mr. Kammerdiner's protest. These are the final letters.

The Court: This is the Agent's letter, and this is the protest, and this is the action of the Internal Revenue.

Mr. Bloom: Yes, your Honor.

The Court: Do they relate to the same year?

Mr. Bloom: Yes, all to 1928. One letter, I believe, is addressed to Mrs. Kammerdiner and the other to Mr. Kammerdiner.

The Court: The objection will be overruled. They may be received as one Exhibit, as bearing upon any question of estoppel.

The Clerk: Plaintiff's 10.

(The documents referred to were received in evidence and marked "Plaintiff's Exhibit No. 10.")

(Testimony of James A. Kammerdiner.)

PLAINTIFF'S EXHIBIT No. 10

IT:R

Treasury Department
Internal Revenue Service
Los Angeles, California

Office of
Internal Revenue Agent in Charge

Mr. and Mrs. J. Kammerdiner
Doing business as J. Kammerdiner
237 South Highland Avenue
Los Angeles, California

In re: Income Tax
Date of report: May 15, 1930
Year covered: 1928

Sir:

There is attached a statement setting forth adjustments which this office proposes to recommend affecting the distributive or beneficial interests shown on your return, and a form of acceptance. If the adjustments suggested are satisfactory and you desire that the recommendations be forwarded promptly to the Bureau at Washington for review, the form of acceptance should be signed and forwarded to this office.

If you do not agree with the conclusions set forth in the attached statement it is desired that every opportunity be afforded you to present to this office any objections or additional information. You are

(Testimony of James A. Kammerdiner.)

Plaintiff's Exhibit No. 10—(Continued)

accordingly granted thirty days from the date of this letter within which you may, if you so desire, protest the proposed adjustments. The protest and any additional statement of facts must be submitted to this office, executed in triplicate under oath, and should contain the following information:

(a) The name and address of the partnership or fiduciary;

(b) The designation of the year or years involved;

(c) An itemized schedule of the findings to which exception is taken;

(d) A summary statement of the grounds relied upon in connection with each exception;

(e) In case a hearing is desired a statement to that effect.

(f) In case the protest is prepared or filed by an attorney or agent it shall have thereon a statement signed by such attorney or agent showing whether or not he prepared it and whether or not the attorney or agent knows of his own knowledge that the facts therein are true.

If a protest is filed it will be given careful consideration in this office before the recommendations are forwarded to Washington for action. In the event that you do not protest within the thirty-day

(Testimony of James A. Kammerdiner.)

Plaintiff's Exhibit No. 10—(Continued)

period, the case will be forwarded immediately thereafter to the Bureau at Washington for review.

In the event the recommendations are not approved upon review in Washington you will be notified and given opportunity to discuss the changes with this office, or should you fail to protest to this office, any protest which you may subsequently file with Washington will be referred to this office for consideration.

Please acknowledge receipt by return mail.

Respectfully,

ALF OFTEDAL

Internal Revenue Agent in
Charge.

Inclosures:

W. D. Chandler
Examining Agt.

In re: Mr. and Mrs. J. Kammerdiner

Table of Contents

Preliminary Statement

Schedules 1 and 1-A

Exhibit A

Preliminary Statement

Summary

Year

1928

Taxable Income Decreased
\$168,817.20

(Testimony of James A. Kammerdiner.)

Plaintiff's Exhibit No. 10—(Continued)

The business reported on Lines 1-2 and 3 of Form 1065 is conducted in the name of J. Kammerdiner. No written partnership agreement has ever existed between J. Kammerdiner and his wife Myrtle B. Kammerdiner and the business has at no time been held out to the public as a partnership. Contracts in connection with the business are made in the name of J. Kammerdiner and advertising matter holds the business out to the public as the individual business of J. Kammerdiner.

The business originated in 1923 when J. Kammerdiner obtained a patent on an apparatus, called a "Rotary jar" which is used in the recovery of drilling apparatus which becomes stuck in the drilling of oil wells.

Prior to the year 1926 J. Kammerdiner filed his returns of the business as an individual. For the years 1925 to 1927, inclusive, returns were made on Form 1065 for the alleged partnership of Mr. and Mrs. J. Kammerdiner. In rendering the returns on Form 1065 for these years reliance was placed on an alleged oral partnership agreement between husband and wife.

The returns for 1925 to 1927, inclusive, were the subject of prior examinations and it was held by examining officers that no partnership existed and the entire income was treated as income of husband.

Protests were submitted by both husband and wife, as to the findings, and the additional taxes

(Testimony of James A. Kammerdiner.)

Plaintiff's Exhibit No. 10—(Continued)

recommended for assessment have not been paid. J. Kammerdiner informed examining officer that the protests are slated to be acted upon by the Board of Tax Appeals.

As of January 3, 1928, a document was drawn up for and signed by J. Kammerdiner and his wife, Myrtle B. Kammerdiner, which they designate as a partnership agreement but which in fact is a joint tenancy agreement and was so considered by the attorney, Kimpton Ellis, who drew it up for the taxpayer's. See Exhibit A.

This agreement states, among other things, that all of the assets of the "Rotary jar" business are the community property of husband and wife. The principal asset of the business is the patent which was obtained by the husband in 1923 and under the protection of which he manufactures the "Rotary jar" which produces the income. This patent has never been assigned by J. Kammerdiner and remains his separate property to continue to hold or to dispose of as he may see fit.

Satisfactory evidence was submitted as to the joint ownership of all of the property which produced the income which was reported on Lines 4-5-7-9 and 10 of Form 1065.

In reports under even date on J. Kammerdiner and Mrs. Jas. Kammerdiner, examining officer has allocated all of the income from the "Rotary jar" business to husband and the other income has been

(Testimony of James A. Kammerdiner.)

Plaintiff's Exhibit No. 10—(Continued)
allocated between husband and wife on a fifty fifty basis.

The members of the alleged partnership do not accept examining officer's findings and it is assumed that protests will be submitted as was done for prior years.

SCHEDULE 1

Year ended 12-31-28

Net Income	
Net income as disclosed by return.....	\$168,817.20
As corrected	None
<hr/>	
Net adjustment	\$168,817.20
Nontaxable income and additional deductions:	
(a)	\$168.817.20
Total	\$168,817.20
Net adjustment as above.....	\$168,817.20

SCHEDULE 1-A

Explanation of Items

- (a) See reports under even date covering examination of returns of J. Kammerdiner and Mrs. Jas. Kammerdiner.

It is held that no partnership exists and the income returned by the alleged partnership has been included in the separate returns of the individuals as their interests appear, as explained in reports of even date.

Exhibit A

(Copy)

The undersigned James A. Kammerdiner and

(Testimony of James A. Kammerdiner.)

Plaintiff's Exhibit No. 10—(Continued)

Myrtle B. Kammerdiner, husband and wife, of Los Angeles, California, hereby state, declare and agree that the business of manufacturing, renting and selling Rotary Jars, heretofore conducted by them under the name of James A. Kammerdiner, at 237 South Highland Avenue, Los Angeles, California, all the assets of which business is their community property, is now and all increase or change thereof shall be, their joint property with right of survivorship.

In Witness Whereof we have hereunto affixed our signatures at the City of Los Angeles, California, on the 3rd day of January, 1928.

JAMES A. KAMMERDINER

MYRTLE B. KAMMERDINER

(Copy)

State of California,
County of Los Angeles—ss.

On this 3rd day of January, 1928, before me Kimpton Ellis, a Notary Public in and for the said county of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared James A. Kammerdiner and Myrtle B. Kammerdiner, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

(Testimony of James A. Kammerdiner.)

Plaintiff's Exhibit No. 10—(Continued)

In Witness whereof, I have hereunto set my hand and affixed my official seal in said County the day and year in this certificate first above written.

[Seal]

KIMPTON ELLIS

Notary Public in and for said County of Los Angeles, State of California.

In re: Mrs. Jas. Kammerdiner

Place.....

Date.....

To Be Used in Case the Findings in Report
Are Not Conceded

Internal Revenue Agent in Charge,
Los Angeles, California.

Receipt is hereby acknowledged of the report dated May 15, 1930, covering the income tax liability for year 1928.

Additional written evidence will be submitted to your office in triplicate within 30 days from the date of such report.

This will be submitted over the taxpayer's sworn signature.

(Signed).....

.....

.....

(Testimony of James A. Kammerdiner.)

Plaintiff's Exhibit No. 10—(Continued)

Treasury Department
Bureau of Internal Revenue
Los Angeles Division

May 5, 1930

Community Property, Advice to Taxpayers

The Bureau of Internal Revenue holds that community income cannot be divided for income tax purposes but must be returned and the tax paid by the husband who, under the laws of the State, has the management and control of such property. However, pending final court adjudication, in rendering original returns hereafter husband and wife may each report one-half of the community income. In California, this applies only to the income from community property acquired on or after July 29, 1927, and to compensation earned on or after that date. For your information and protection, you are advised that in auditing individual returns, this office will proceed as follows:

1. If husband and wife filed separate original returns and divided the community income, consideration of the issue will be deferred pending final court decision. Unless due to the running of the statute of limitations on assessments or taxpayer's non-acquiescence in proposed adjustments of other issues (in which cases, a formal notice of deficiency or 60-day letter will be issued), the report of the field

(Testimony of James A. Kammerdiner.)

Plaintiff's Exhibit No. 10—(Continued)

investigation will be held either in this office or the Bureau. If other adjustments produce an overassessment, claim for refund should be filed. Otherwise taxpayer will be informed of the result of the litigation when concluded.

2. If no division of community income is shown in separate returns filed by husband and wife, taxpayers who intend to claim the benefit of the community property law in order to protect their interests should file claims for refund with the appropriate Collector in the name of the spouse reporting the entire community income.

3. If only one return was filed by husband or wife and that return was not a joint return taxpayers desiring the benefit of the community property law should file a claim for refund with the appropriate Collector.

4. Taxpayers who file joint returns are advised that under existing procedure they will not be permitted to file separate returns. (See *R. Downes*, 5 B.T.A. 1029; *Buttolph v. Commissioner*, 29 Fed. (2d) 695).

All claims filed with Collectors will be forwarded to the Claims Control Section, Income Tax Unit.

Taxpayers claiming the benefit of the community property law but who are in agreement with field investigations of other issues, should execute Form 870—Agreement for Immediate Assessment—rather

(Testimony of James A. Kammerdiner.)

Plaintiff's Exhibit No. 10—(Continued)
than Form 866—Agreement as to Final Determina-
tion of Tax Liability.
C. P. Mim. 3 (Rev.)

Protest
of

James Kammerdiner
237 South Highland Avenue,
Los Angeles, California

Against the

Proposed Assessment of Additional Income Tax
For the Calendar Year 1928

Los Angeles, California
June 14, 1930.

Hon. Alf Oftedal,
Internal Revenue Agent in Charge,
Los Angeles, California.

Your File IT:R

Dear Sir:

The above-named taxpayer acknowledges receipt of two Revenue Agent's reports dated May 15, 1930, under the above reference proposing certain income adjustments which, if sustained, will result in a deficiency in income tax for the calendar year 1928 in the amount of \$19,716.33. Inasmuch as the proposed additional assessment is, in the opinion of counsel, without sound legal basis, this protest against the Agent's adjustments is being submitted for the consideration of your office within the 30-

(Testimony of James A. Kammerdiner.)

Plaintiff's Exhibit No. 10—(Continued)

day period granted for such purpose by your letter. An oral conference is also requested. There is but one point in controversy and it will be discussed briefly as follows:

Income From Property Held In Joint Tenancy

The Revenue Agent has included as a part of the taxpayer's gross income the entire income from the "Rotary Jar" business of himself and wife in spite of the existence of a written joint tenancy contract which was noted by the Agent but which he refuses to recognize for income tax purposes. The Agent states in part:

"As of January 3, 1928, a document was drawn up for and signed by J. Kammerdiner and his wife, Myrtle B. Kammerdiner, which they designate as a partnership agreement but which in fact is a joint tenancy agreement and was so considered by the attorney who drew it up for the taxpayer. See Exhibit A. * * * The principal asset of the business is the patent which was obtained by the husband in 1923 and under the protection of which he manufactures the 'Rotary Jar' which produces the income. * * * The entire income from the 'Rotary Jar' business is held to be income of J. Kammerdiner in view of the fact that no partnership exists."

The Revenue Agent thus freely acknowledges that the agreement is a joint tenancy agreement

(Testimony of James A. Kammerdiner.)

Plaintiff's Exhibit No. 10—(Continued)

but nevertheless refuses to effectuate it. The full text of the agreement is set forth in Exhibit A attached to the Agent's report. While the verbiage of the agreement could undoubtedly be improved in some respects, no misunderstanding can attach to the import of its final words:

“is now (January 3, 1928), and all increase or change thereof shall be, their joint property with right of survivorship.”

The right of survivorship necessarily attaches to joint tenancy and need not be specifically mentioned. The fact that it was specifically mentioned, however, removes the last vestige of possible doubt as to just what kind of estate was being created. The Agent was therefore perfectly correct in denominating it a joint tenancy agreement. In the opinion of taxpayer's counsel, the agreement in question would be held to be a valid contract in any court of law or equity.

The nature of joint tenancy of property in California is well known. Where one of the joint tenants is a married woman, as in the case at bar, her interest in the joint property and in the income therefrom is a present vested interest in no respect whatever inferior to that of her husband or of any other joint tenant. Nor is her share of the joint tenancy income subject in the slightest degree to the control of her husband as in the case of community income. Her right to report her share of

(Testimony of James A. Kammerdiner.)

Plaintiff's Exhibit No. 10—(Continued)

joint tenancy income on her separate income tax return is therefore beyond all cavil and in fact has been exemplified in the present Agent's report in connection with all of Mr. and Mrs. Kammerdiner's property excepting only the "Rotary Jar" property. For instance, the general form of the following statement on page 6 of his report recurs a number of times:

"The gain from sales reported on line 9 of Form 1065 was derived from property owned jointly by husband and wife and has, therefore, been allocated to them on a fifty fifty basis in their separate returns."

The Agent refuses to divide the income from the "Rotary Jar" business because of his belief "that no partnership exists". He states that the "Rotary Jar" agreement "in fact is a joint tenancy agreement" but still refuses to divide the income, evidently considering it community.

In this connection your attention is invited to the following provisions of the California Civil Code.

Sec. 158. Either husband or wife may enter into any engagement or transaction with the other or with any other person, respecting property, which either might if unmarried; subject, in transactions between themselves, to the general rules which control the actions of persons occupying confidential relations with each other, as defined by the title on trusts.

Sec. 161. A husband and wife may hold

(Testimony of James A. Kammerdiner.)

Plaintiff's Exhibit No. 10—(Continued)

property as joint tenants, tenants in common-
or as community property.

A reading of the above sections shows clearly that husbands and wives in California have the utmost freedom of contract with each other respecting property and are permitted to hold property under various forms of tenure, not being restricted in any sense to the community form. With the mutual consent of each, either verbally or in writing, existing community can be instantly dissolved and a separate or joint or common estate created. Section 1636 of the Civil Code provides that contracts, if lawful, must be so interpreted as to effectuate the mutual intentions of the contracting parties.

In view of the law and facts outlined above it is submitted that the agreement of January 3, 1928 was a valid lawful contract and whatever the tenure by which the property was previously held, the assets of the Rotary Jar business became on that date, eo instante, the joint property of the taxpayer and his wife; that both their interests therein were present, equal, vested interests and hence that the income from such business may lawfully be reported on separate income tax returns.

Respectfully,

WILL ST. C. VOELKEL,

Attorney in Fact for James
Kammerdiner

(Testimony of James A. Kammerdiner.)

Plaintiff's Exhibit No. 10—(Continued)

State of California,

County of Los Angeles—ss.

Will St. C. Voelkel, hereby duly sworn, says that he is the attorney in fact of James Kammerdiner, the taxpayer named, and that the proposed assessment of income tax for the calendar year 1928 is in his opinion wholly without sound legal basis.

He further deposes and says that to the best of his knowledge and belief the facts set out in the foregoing brief are true and correct; that this protest is not made for the purpose of securing any delay in the collection of any tax properly assessable against protestant but for the sole purpose of having all the questions raised and in any way affecting protestant's tax liability for the year 1928 carefully reviewed and determined by the Internal Revenue Agent in Charge, at Los Angeles, California or by any agency to which this protest may be referred.

WILL ST. C. VOELKEL

Subscribed and sworn to before me this 14th day of June, 1930.

M. LeSAGE,

Notary Public in and for the State and County aforesaid.

(Testimony of James A. Kammerdiner.)

Plaintiff's Exhibit No. 10—(Continued)

Certificate

I hereby certify that the foregoing protest was prepared by me for and on behalf of said taxpayer; that the facts recited in said protest are the exact facts as given to me by the taxpayer and to the best of my knowledge and belief are true and correct.

Dated at Los Angeles, California, this 14th day of June, 1930.

WILL ST. C. VOELKEL

With Claude I. Parker

Los Angeles, California.

Office of

Internal Revenue Agent in Charge

Los Angeles Division

IT:FC

Treasury Department

Internal Revenue Service

Los Angeles, Calif.

939 South Broadway,

April 22, 1931

Mrs. James A. Kammerdiner,

c/o Claude I. Parker,

8th Floor, Bank of America Bldg.,

Los Angeles, California.

Reference is again made to your income tax liability for the year 1928 as stated in a Revenue

(Testimony of James A. Kammerdiner.)

Plaintiff's Exhibit No. 10—(Continued)

Agent's report and to the protest of your husband, James A. Kammerdiner, against the findings.

Careful consideration has been given to your contention in conference with the result that the Conference Committee has reached decision on the issue raised, as follows:

That since the protest of the taxpayer's husband has been conceded and the Rotary Jar business considered as having been owned jointly by the husband and wife during 1928, one-half of the income therefrom should be included in the taxpayer's gross income. The husband's salary from the Kammerdiner Cutter Corporation being community income, one-half thereof should also be included in the gross income of the taxpayer.

Since the taxpayer performed services in the business and it has been held she had a joint interest in the business, 20% of the net income from the business has been allowed as earned income to the wife.

There is enclosed a recomputation of tax liability in accordance with the foregoing decision.

Since you have executed an agreement on Form 870, which waives your right of appeal to the Board of Tax Appeals and assents to the immediate assessment of the amount of tax now shown, the report has been forwarded to the Commissioner of Internal Revenue, Washington, D. C., with a recommenda-

(Testimony of James A. Kammerdiner.)

Plaintiff's Exhibit No. 10—(Continued)
tion for closing the case on the basis above indicated.

ALF OFTEDAL

Internal Revenue Agent in
Charge

FHG/Mc

Encl: Recomputation of tax liability

(Testimony of James A. Kammerdiner.)

Plaintiff's Exhibit No. 10—(Continued)

Mrs. James A. Kammerdiner.

Conferee's Revision
Statement of Total Tax Liability

Year	Tax Previously Assessed	Adjustments Proposed in Accompanying Report		Correct Tax Liability
		Deficiency	Overassessment	
1928	\$12,382.42	\$371.86	—	\$12,754.28
Total deficiency		\$371.86	—	

Computation of Net Income and Tax for 1928.

Net income per Agent's report..... \$ 5,226.81

Add: One-half of husband's salary,
community income\$ 300.00One-half of income from busi-
ness 80,174.57 80,474.57Corrected net income subject to sur-
tax \$85,701.38

Less: Dividends\$ 154.29

Personal exemption 2,150.00 2,304.29

Balance subject to normal tax..... \$83,397.09

Normal tax at 1½% on \$4,000.00....\$ 60.00

Normal tax at 3% on 4,000.00.... 120.00

Normal tax at 5% on 75,397.09.... 3,769.85

Surtax on \$85,701.38..... 8,943.26

Total \$12,893.11

Less: Earned income credit..... 138.83

Total tax assessable..... \$12,754.28

Tax previously assessed..... 12,382.42

Additional tax to be assessed..... \$ 371.86

Computation of Earned Income Credit

One-half of the business net income \$80,174.57

20% of income from business..... \$16,034.91

Less: Personal exemption 2,150.00

Balance subject to normal tax..... \$13,884.91

(Testimony of James A. Kammerdiner.)

Plaintiff's Exhibit No. 10—(Continued)

Normal tax at 1½% on \$4,000.00....	\$	60.00
Normal tax at 3% on 4,000.00....		120.00
Normal tax at 5% on 5,884.91....		294.25
Surtax on \$16,034.91.....		81.05
<hr/>		
Total	\$	55.30
Credit allowed, 25%.....	\$	138.83

Office of
Internal Revenue Agent in Charge
Los Angeles Division
IT:FC

Treasury Department
Internal Revenue Service
Los Angeles, Calif.
939 South Broadway,

April 22, 1931

Mr. James A. Kammerdiner,
c/o Claude I. Parker,
8th Floor, Bank of America Bldg.,
Los Angeles, California.

Reference is again made to your income tax liability for the year 1928 as stated in a Revenue Agent's report and to your protest against the findings.

Careful consideration has been given to your contention in conference with the result that the Conference Committee has reached decision on the issue raised, as follows:

That the taxpayer's protest be conceded, the

(Testimony of James A. Kammerdiner.)

Plaintiff's Exhibit No. 10—(Continued)
evidence tending to show that during the year 1928 the taxpayer and his wife jointly owned the Rotary Jar business and accordingly each can report one-half of the income therefrom on their separate income tax returns.

Salary from Kammerdiner Cutter Corporation is community income and one-half thereof should be included in the separate return of the taxpayer's wife.

There is enclosed a recomputation of tax liability in accordance with the foregoing decision.

Since you have executed an agreement on Form 870, which waives your right of appeal to the Board of Tax Appeals and assents to the immediate assessment of the amount of tax now shown, the report and your protest have been forwarded to the Commissioner of Internal Revenue, Washington, D. C. with a recommendation for closing the case on the basis above indicated.

ALF OFTEDAL

Internal Revenue Agent in
Charge

FHG/Mc

Encl: Recomputation of tax liability

(Testimony of James A. Kammerdiner.)

Plaintiff's Exhibit No. 10—(Continued)

James A. Kammerdiner

Conferee's Revision

Statement of Total Tax Liability

Year	Tax Previously Assessed	Adjustments Proposed in Accompanying Report		Correct Tax Liability
		Deficiency	Overassessment	
1928	\$12,543.70	\$204.61	—	\$12,748.31
Total deficiency		\$204.61		

Computation of Net Income and Tax for 1928

Net income per Agent's report....			\$166,175.99
Less: One-half of salary, com- munity income	\$ 300.00		
One-half of income from business	80,174.57		80,474.57
Corrected net income subject to surtax			\$ 85,701.42
Less: Dividends	\$ 154.30		
Personal exemption \$1350; credit for dependents— \$800.	2,150.00		2,304.30
Balance subject to normal tax.....			\$ 83,397.12
Normal tax at 1½% on \$4,000.00	\$ 60.00		
Normal tax at 3% on 4,000.00	120.00		
Normal tax at 5% on 75,397.12	3,769.86		
Surtax on \$85,701.42.....	8,943.27		
Total			\$ 12,893.13
Less: Earned income credit.....			144.82
Total tax assessable.....			\$ 12,748.31
Tax previously assessed			12,543.70
Additional tax to be assessed.....			\$ 204.61

(Testimony of James A. Kammerdiner.)

Plaintiff's Exhibit No. 10—(Continued)

Computation of Earned Income Credit		
One-half of income from business	\$80,174.58	
20% of income from business.....		\$ 16,034.92
One-half of salary from Kammer-		
diner Cutter Corporation		300.00
		<hr/>
Total earned net income.....		\$ 16,334.92
Less: Personal exemption and		
credits		2,150.00
		<hr/>
Balance subject to normal tax.....		\$ 14,184.92
Normal tax at 1½% on \$4,000.00	\$ 60.00	
Normal tax at 3% on 4,000.00	120.00	
Normal tax at 5% on 6,184.92	309.25	
Surtax on \$16,334.92.....	90.03	
		<hr/>
Total tax on earned income.....		\$ 579.30
Credit allowed, 25%.....		\$ 144.82

[Endorsed]: Filed Dec. 29, 1941.

Q. Mr. Kammerdiner, I wish you would tell us a little more in detail about the boarding house Mrs. Kammer- [115] diner ran and what part you played in that enterprise, if any.

How was it started? How did you happen to start in the boarding house enterprise?

A. I was picked out of 40 drillers down here at Salt Lake.

Q. I will ask you to speak a little louder.

A. I was picked out of 40 drillers down here at Salt Lake. That is just down——

Q. That is all right.

A. ——around Beverly there somewhere, and

(Testimony of James A. Kammerdiner.)

sent out to Brea on what we called a wildcat well. That is a new well. And the crew that was out there, they were down about 2600 feet and they had me to——

Q. (Interrupting): I don't care about that. Let's talk about the boarding house.

A. I want to get up to that.

The Court: Why is he going into this matter?

Mr. Smith: He didn't bring out the complete picture. He said it was Mrs. Kammerdiner's enterprise——

The Court: (Interrupting): I don't know if it makes any difference. I will let it go. It isn't re-direct, and I will sustain the objection that should have been made.

By Mr. Smith:

Q. Mr. Kammerdiner, did the State of California in the California Inheritance Tax subject to tax the rotary [116] jar business that we have in question here?

Mr. Mitchell: That is objected to as wholly immaterial.

The Court: Sustained as not binding on the defendant.

Mr. Smith: This was a final judgment. [117]

Mr. Smith: That is our case.

DAN O'HANLON

called as a witness by and on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name.

The Witness: Dan O'Hanlon.

Direct Examination

By Mr. Mitchell:

Q. Mr. O'Hanlon, do you assist tax payers in preparing tax returns? A. Yes, I do.

Q. How long have you been doing that?

A. About twenty years.

Q. Did you ever in the '20's assist Mr. and Mrs. Kammerdiner in preparing their income tax returns? [118] A. Yes, I did.

Q. Do you recall for what years?

A. Well, I looked up my records yesterday, and it was in 1925, '26, '27 and '8.

Q. 1925, '26, '27 and '8? A. Yes.

Mr. Smith: Just a minute.

May I ask on voir dire: Are you an attorney, Mr. O'Hanlon?

The Witness: No, sir.

By Mr. Mitchell:

Q. Did you ever prepare a protest in respect of taxes for the years 1925 and '26?

A. I can't remember. I probably did.

Mr. Mitchell: The Defendant offers a certified copy of protest for the years, income taxes for the

(Testimony of Dan O'Hanlon.)

years 1925 and 1926, signed "J. Kammerdiner," as the defendant's next Exhibit.

Mr. Bloom: Objected to as incompetent, irrelevant and immaterial and not bearing on any issue within this case.

Mr. Mitchell: It contains many statements as to the ownership of the property, your Honor.

The Court: All right. I will overrule the objection.

Mr. Mitchell: That will be Defendant's 17.

The Court: It will be received.

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 17.") [119]

DEFENDANT'S EXHIBIT No. 17

Protest against decision of Treasury Department and additional information re Partnership of Mr. and Mrs. J. Kammerdiner, with reference to returns for 1925-1926 of Mr. J. Kammerdiner.

Name and address of taxpayer is Mr. J. Kammerdiner, of 237 S. Highland Avenue, Los Angeles, California.

The protest is made against decision as mentioned in letter dated June 12th, 1928 from Treasury Department, Internal Revenue Service, 726 S. Hill Street, and more particularly detailed in preliminary statement.

The years concerned are 1925 and 1926 and the

(Testimony of Dan O'Hanlon.)

amount of tax involved is \$10,190.26, being \$4220.70 for the year 1925 and \$5969.56 for the year 1926.

Exception is taken to the decision disallowing a partnership between Mr. and Mrs. J. Kammerdiner, and this is the cause of the increase in tax. Charging all the income to Mr. J. Kammerdiner, whereas the income is from a Partnership between Mr. and Mrs. J. Kammerdiner, and the income should be permitted to be shown as half for Mr. J. Kammerdiner, and half for Mrs. J. Kammerdiner.

The reason taxpayer objects to disallowance of partnership basis, is due to the fact that ever since Mr. J. Kammerdiner started to work on his patent Rotary Jars, his wife, Mrs. J. Kammerdiner, has always assisted him in his work. Mrs. J. Kammerdiner has kept the books and accounts of the business ever since Mr. Kammerdiner left his work in the oilfields, and she has been consulted and questioned by Mr. Kammerdiner in connection with the business in every way. On the partnership return submitted for 1925, there appeared a statement to this effect "Both Mr. and Mrs. Kammerdiner work in the business and agreement has been made that Mrs. Kammerdiner receives vested interest in one half of the property and income, making hers separate property." This return, containing this statement, was signed and sworn to as a partnership before a Notary Public, when the return was prepared. Previous to the submission of an Income Tax Partnership return, a partnership really existed as

(Testimony of Dan O'Hanlon.)

either party could sign checks and all property was considered belonging to both parties equally. When partnership return was filed, it was filed for Income Tax purposes because a partnership between husband and wife is permitted in California as per I.T. 1744 C.B. Dec. 1923, p. 179 quoted as follows — “Returns of income from partnership between husband and wife in California. Under the provisions of section 158 of the Civil Code of California, a husband and wife may enter into a partnership in California and if there is an agreement which shows that the intention of the parties is to create a vested interest in the partnership as her separate property, such intention will change the character of their property from community to separate property. In such cases the wife is entitled to report as her separate income all amounts earned by her under such agreement.” I understand that in the full ruling of I.T. 1744 the Income Tax Unit, quotes from the California case of *Perkins v. Sunset Telephone and Telegraph Company*, 103 Pacific Reported 190, as follows:—It will be seen, by an examination of the authority cited above, that the utmost freedom of contract exists in California between husband and wife and that the Courts will resort to circumstantial evidence furnished by the general conduct of the spouses with reference to their property in determining the existence or non-existence of a contract where the exact terms of the alleged agreement has escaped the memory of one or both of the parties to it.” I believe the law will allow an oral

(Testimony of Dan O'Hanlon.)

agreement between husband and wife to stand and as there was an oral agreement between Mr. and Mrs. J. Kammerdiner to the effect that everything belonged equally to each that it was perfectly proper and correct for a partnership return to be sent in, especially in view of the fact that Mrs. Kammerdiner helped in the business, working in the office, attending to all correspondence and at various times being consulted regarding the business.

The taxpayer does not desire a hearing as he cannot say more than he has said above.

(Signed) J. KAMMERDINER.

Subscribed and sworn to before me this 3rd day of July, 1928.

[Seal] H. F. OVERBECK,

Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires May 16, 1933.

The above statement was prepared by Dan O'Hanlon, of Fullerton California at the request of Mr. J. Kammerdiner.

I prepared the Income Tax Return of Mr. and Mrs. J. Kammerdiner on a partnership basis, and before doing so questioned them regarding their partnership. I was informed by each of them that everything they had was a fifty fifty proposition, that each was permitted to sign checks without signature of the other party, that Mrs. J. Kammerdiner worked in the business connected with the patent Rotary Jars, that she kept the books, accounts

(Testimony of Dan O'Hanlon.)

and took care of correspondence, and it was from her that I obtained the figures necessary to prepare the return. It was upon their instructions that I typed on the return for 1925 the following "Both Mr. and Mrs. Kammerdiner work in the business and agreement has been made that Mrs. Kammerdiner receives vested interest in one half of property."

I know from questions asked Mr. and Mrs. Kammerdiner, when preparing their return, that the statement hereby made by them is true to the best of their knowledge and belief.

Respectfully submitted,

DAN O'HANLON,

309-311-313 N. Spadra, Fullerton, California.

Subscribed and sworn to before me this 28th day of June, 1928.

C. M. BIGGS,

Notary Public in and for the
County of———, State
of California.

[Endorsed]: Filed Dec. 29, 1941.

By Mr. Mitchell :

Q. I hand you, Mr. O'Hanlon, a certified copy, Defendant's Exhibit 17, a certified copy of what purports to be a protest prepared by you as to in-

(Testimony of Dan O'Hanlon.)

come tax deficiencies for the years 1925 and '26, and ask you whether you recognize it?

A. That is my signature.

Q. Did you prepare this protest?

A. I must have done it.

Q. What was the information based upon, upon which this protest was drafted?

Mr. Bloom: Objected to as incompetent, irrelevant and immaterial, and not tending to prove or disprove any issue in this case.

The Court: Overruled.

By Mr. Mitchell:

Q. I mean, where did you get the information?

A. I got it from Mr. and Mrs. Kammerdiner.

Q. Did Mrs. Kammerdiner come to see you?

A. Yes, she did.

Q. I will read to you a portion of your certificate to refresh your memory: "I was informed by each of them that everything they had was a 50-50 proposition."

Did anyone make that statement to you at the time?

A. Well, I couldn't say which one it was made by, one or the other. [120]

Q. "That Mrs. J. Kammerdiner worked in the business connected with the patent rotary jars, that she kept the books, accounts, and took care of correspondence, and it was from her that I obtained the figures necessary to prepare the return."

Is that correct?

(Testimony of Dan O'Hanlon.)

A. Yes.

Q. Did she so state? A. Yes.

Q. "It was upon their instructions that I typed on the return for 1925 the following 'Both Mr. and Mrs. Kammerdiner worked in the business and agreement has been made that Mrs. Kammerdiner receives vested interest in one-half of the property and income, making hers separate property.' "

Going back to that first return for 1925, just what did either of them say to you in respect of that agreement?

A. That is a long time ago. I couldn't say definitely.

Q. In substance, Mr. O'Hanlon.

A. In substance I think Mr. Kammerdiner himself has testified that they were partners and everything was 50-50.

Q. Is that your recollection now of what they told you at that time? A. Yes, it is.

Mr. Mitchell: We offer also another protest, which is not certified, but a photostatic copy signed by J. Kammerdiner and Mrs. J. Kammerdiner.

[121]

The Court: Does that relate to the same year?

Mr. Mitchell: It relates to the same year, your Honor, but it is a separate protest.

Mr. Bloom: Same objection.

The Court: The objection is overruled. It may be received in evidence.

The Clerk: 18.

(Testimony of Dan O'Hanlon.)

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 18.")

DEFENDANT'S EXHIBIT NO. 18

Protest against decision of Treasury Department and additional information re partnership of Mr. and Mrs. J. Kammerdiner, with reference to returns on partnership basis of Mr. and Mrs. J. Kammerdiner for 1925-1926.

Name and address of taxpayer, is Mr. and Mrs. J. Kammerdiner, of 237 S. Highland Avenue, Los Angeles, California, dba J. Kammerdiner.

The protest is made against decision as mentioned in letter dated Jun 12 1928 from Treasury Department, Internal Revenue Service, 728 S. Hill Street, Los Angeles, California, and more particularly detailed in summary attached to above mentioned Treasury Department letter.

The years involved are 1925 and 1926 and the amount of tax involved is as shown in protests made by Mr. and Mrs. J. Kammerdiner in their individual protests against the above referred to decision. No amount is mentioned in the partnership.

Exception is taken to the decision disallowing a partnership between Mr. and Mrs. J. Kammerdiner, and this is the cause of the increase in tax. Charging all the income to Mr. Kammerdiner makes a big increase in the amount of tax payable, and it is our

(Testimony of Dan O'Hanlon.)

contention that a partnership existed and a partnership return should be allowed to stand.

The reason we object to disallowance of partnership basis, is due to the fact that ever since the business of making and selling the patent rotary jars was started, both of us have worked in the business, Mr. Kammerdiner doing most of the outside work and Mrs. Kammerdiner doing all the inside work. Mrs. Kammerdiner has kept the books, and accounts, took care of collecting backward accounts, and conferred with and has been consulted in every way by Mr. Kammerdiner. On the partnership return submitted for 1925, there appeared a statement to this effect "Both Mr. and Mrs. Kammerdiner work in the business and agreement has been made that Mrs. Kammerdiner receives vested interest in one half of the property and income, making hers separate property." This return, containing this statement, was signed and sworn to before a Notary Public, when the return was prepared. Previous to the submission of an Income Tax return, a partnership really existed as either party could sign checks and all property was considered belonging to both parties equally, and an oral agreement was made that in view of Mrs. Kammerdiner having always been a partner and actually doing her full share of the work of the business, the business would be conducted on a partnership basis. When partnership return was filed for Income Tax purposes, it was done because a partnership between

(Testimony of Dan O'Hanlon.)

husband and wife was and is permitted in California as per I.T. 1744, C.B. Dec. 1923, p. 179 quoted as follows—"Returns of income from partnership between husband and wife in California. Under the provisions of section 158 of the Civil Code of California, a husband and wife may enter into a partnership in California and if there is an agreement which shows that the intention of the parties is to create a vested interest in the partnership as her separate property, such intention will change the character of their property from community to separate property. In such cases the wife is entitled to report as her separate income all amounts earned by her under such agreement." We understand that in the full ruling of I.T. 1744 the Income Tax Unit, quotes from the California case of *Perkins v. Sunset Telephone and Telegraph Company*, 103 Pacific Reporter 190, as follows, "It will be seen, by an examination of the authority cited above, that the utmost freedom of contract exists in California between husband and wife, and that the courts will resort to circumstantial evidence furnished by the general conduct of the spouses with re-reference to their property in determining the existence or non-existence of a contract where the exact terms of the alleged agreement has escaped the memory of one or both of the parties to it." We believe the law will allow an oral agreement between husband and wife to stand and as there was an oral agreement between us to the effect that everything belonged equally to

(Testimony of Dan O'Hanlon.)

each of us, it was perfectly proper and correct for a partnership return to be sent, especially in view of the fact that Mrs. Kammerdiner has worked in the business ever since it was started and assisted in the management of it.

We do not desire a personal hearing as we cannot say more than we have said above.

Protest of Mr. and Mrs. J. Kammerdiner, against decision of Treasury Department disallowing a partnership return.

(signed) J. KAMMERDINER

MRS. JAS. KAMMERDINER

Subscribed and sworn to before me this 3rd day of July 1928.

[Seal]

H. F. OVERBECK

Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires May 16, 1932.

The above statement was prepared by Dan O'Hanlon, of Fullerton, California, at the request of Mr. and Mrs. Kammerdiner.

I prepared the Income Tax Return (Partnership) of Mr. and Mrs. Kammerdiner for 1925 and 1926, and before doing so for 1925 questioned them regarding their partnership. I was informed by both of them that everything they had was on a fifty fifty basis, that each was permitted to sign checks without signature of the other party, that Mrs. Kammerdiner worked in the business connected with the patent Rotary Jars, that she kept

(Testimony of Dan O'Hanlon.)

the books, accounts and took care of correspondence, and generally took care of all the inside work, and it was from Mrs. Kammerdiner that I obtained the figures for the preparation of the Income Tax Return. It was upon their instructions that I typed on the return for 1925 the following "Both Mr. and Mrs. Kammerdiner work in the business and agreement has been made that Mrs. Kammerdiner receives vested interest in one half of the property and income, making hers separate property."

I know from questions asked Mr. and Mrs. J. Kammerdiner, when preparing their return, that the statement hereby made by them is true to the best of their knowledge and belief.

Respectfully submitted,

DAN O'HANLON

310-311-313 North Spadra
Rd.

Fullerton, California.

June 28th 1928.

Subscribed and Sworn to before me this 28 day
of June, 1928.

C. M. BIGGS

Notary Public in and for the County of Orange,
State of California.

My Commission Expires December 19, 1929.

[Endorsed]: Filed Dec. 29, 1941.

(Testimony of Dan O'Hanlon.)

Mr. Mitchell: I now offer in evidence partnership returns of Mr. and Mrs. Kammerdiner for the year 1925, 1926 and 1928, certified copies.

Mr. Bloom: Objected to as incompetent, irrelevant and immaterial, tending to neither prove or disprove any issue in this case.

The Court: Overruled.

The Clerk: The first one '25 will be Government's Exhibit 19; for '26 will be 20; and for '28 will be 21.

(The documents referred to were received in evidence and marked "Defendant's Exhibits Nos. 19, 20 and 21.") [122]

DEFENDANT'S EXHIBIT NO. 19

PARTNERSHIP RETURN OF INCOME
For Calendar Year 1925

Do Not Write in These Spaces

Form 1065
U. S. INTERNAL REVENUE
(Individual's Return)
REV. ACT 1926
ASSESSMENT

Tax
Payable
Total \$

Base
Audited by
Unit No.

File This Return With the Collector of Internal Revenue for Your District on or Before March 15, 1926
PRINT PLAINLY NAME AND BUSINESS ADDRESS OF PARTNERSHIP

Mr. and Mrs. J. Kammerdiner
dba J. Kammerdiner

(Name)

237 So. Highland Ave., Los Angeles, California.

(Post Office and State)

IND OF BUSINESS Makers of Patent Rotary Jars

DATE OF ORGANIZATION January 1, 1925

File Code 206

Serial Number

Examined

By

(State Received)

6 CALIF
9-6-40
WARDED BY SUB. SEC. F

INCOME

1. Income from Trade or Business. (From Schedule A) Please see schedule attached
2. Interest on Bank Deposits, Notes, Mortgages, and Corporation Bonds.
3. Income from other Partnerships. (State name and address)

U. S. BOARD OF TAX APPEALS
DIV. 8 DOCKET 41643
JUN 10 1931
PETITIONER'S EXHIBIT 1
RESPONSE

4. Rents and Royalties. (From Schedule B)
5. Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule C)
6. Dividends on Stock of Domestic Corporations.
7. Other Income (including dividends received on stock of foreign corporations). (State nature of income)
(a)
(b)
(c)

8. TOTAL INCOME IN ITEMS 1 TO 7.

53,349.63

DEDUCTIONS

9. Losses by Fire, Storm, etc. (Explain in table on page 3)
10. Other Deductions Authorized by Law. (Explain below or on separate sheet)
(a) Please see schedule attached
(b)
(c)

11. TOTAL DEDUCTIONS IN ITEMS 9 AND 10.

12. NET INCOME (Item 8 minus Item 11)

53,349.63

PARTNERS' SHARES OF INCOME AND CREDITS

(See Instruction 13)

1. NAME AND ADDRESS OF EACH PARTNER	2. PER- CENTAGE OF NET INCOME	3. DIVIDENDS (ITEM 8 ABOVE)	4. EARNED IN- COME (ITEM 12 MINUS SUM OF AMOUNTS IN COLUMNS 3 AND 4)	5. BALANCE OF NET INCOME (ITEM 12 MINUS SUM OF AMOUNTS IN COLUMNS 3 AND 4)	6. CAPITAL NET (GAIN OR LOSS (INCREASE D, DECREASE E)	7. INCOME TAX PAID (GAIN OR LOSS INCREASE A, DECREASE B, LOSS IN C, LOSS IN D, LOSS IN E)	8. INCOME TAX PAID (GAIN OR LOSS IN C, LOSS IN D, LOSS IN E)
(a) Mr. J. Kammerdiner	50	\$	\$	26,674.81			
Mrs. J. Kammerdiner	50			26,674.82			
				53,349.63			

SCHEDULE A—INCOME FROM TRADE OR BUSINESS (See Instruction 1)

1. Total receipts from trade or business

Cost of Goods Sold

2. Labor	\$
3. Material and supplies	\$
4. Merchandise bought for sale	\$
5. Other costs (itemize below or on separate sheet)	\$
6. Plus inventory at beginning of year	\$
7. TOTAL (Lines 2 to 6, inclusive)	\$
8. Less inventory at end of year	\$
9. NET COST OF GOODS SOLD (Line 7 minus Line 8)	\$

OTHER BUSINESS DEDUCTIONS

10. Salaries, exclusive of "Labor" reported on Line 2, and exclusive of partners' salaries	\$
11. Interest on business indebtedness to others	\$
12. Taxes on business and business property	\$
13. Losses by fire, storm, etc. (explain in table provided therefor at foot of page)	\$
14. Bad debts arising from sales or professional services	\$
15. Depreciation, obsolescence, and depletion (explain in table provided therefor at foot of page)	\$
16. Rent, repairs, and other expenses (itemize below or on separate sheet)	\$
17. TOTAL (Lines 10 to 16, inclusive)	\$
18. TOTAL DEDUCTIONS (Line 9 plus Line 17)	\$
19. NET PROFIT (Line 1 minus Line 18) (Enter as Item 1)	\$

Explanation of deductions claimed on Lines 5 and 16

SCHEDULE B—INCOME FROM RENTS AND ROYALTIES (See Instruction 4)

1. KIND OF PROPERTY	2. AMOUNT RECEIVED	3. COST	4. VALUE AS OF MARCH 1, 1913	5. DEPRECIATION (Explain in table at foot of page)	6. REPAIRS	7. OTHER EXPENSES (Itemize below)	8. NET PROFIT (Enter as Item 4)
	\$	\$	\$	\$	\$	\$	\$

Explanation of deductions claimed in Column 7

SCHEDULE C—PROFIT FROM SALE OF REAL ESTATE, STOCKS, BONDS, ETC. (See Instruction 5)

1. KIND OF PROPERTY	2. DATE ACQUIRED	3. AMOUNT RECEIVED	4. DEPRECIATION PREVIOUSLY ALLOWED	5. COST	6. VALUE AS OF MARCH 1, 1913	7. SUBSEQUENT IMPROVEMENTS	8. NET GAIN (Enter in Column 8, Item 1)
		\$	\$	\$	\$	\$	\$

State how property was acquired

SCHEDULE D—CAPITAL NET GAIN OR LOSS FROM SALE OF ASSETS HELD MORE THAN TWO YEARS (See Instruction 5a)

1. KIND OF PROPERTY	2. DATE ACQUIRED	3. DATE SOLD	4. AMOUNT RECEIVED	5. DEPRECIATION PREVIOUSLY ALLOWED	6. COST	7. VALUE AS OF MARCH 1, 1913	8. SUBSEQUENT IMPROVEMENTS, AND CAPITAL DEDUCTIONS	9. NET GAIN (Enter in Column 8, Item 1)
	Mo. Day Year	Mo. Day Year	\$	\$	\$	\$	\$	\$

State how property was acquired

EXPLANATION OF DEDUCTION FOR LOSSES BY FIRE, STORM, ETC., CLAIMED IN SCHEDULE A AND IN ITEM 9

1. KIND OF PROPERTY	2. DATE ACQUIRED	3. COST	4. VALUE AS OF MARCH 1, 1913	5. SUBSEQUENT IMPROVEMENTS	6. DEPRECIATION PREVIOUSLY ALLOWED	7. INSURANCE AND SALVAGE VALUE	8. DEDUCTIBLE LOSS
		\$	\$	\$	\$	\$	\$

EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES A AND B

1. KIND OF PROPERTY (Of buildings, state material of which constructed)	2. DATE ACQUIRED	3. AGE WHEN ACQUIRED	4. PROBABLE LIFE AFTER ACQUISITION	5. COST	6. VALUE AS OF MARCH 1, 1913	8. AMOUNT OF DEPRECIATION CHARGED OFF
				\$	\$	7. Previous years 8. This year

AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules and statements (if any), has been examined by me, and, to the best of my knowledge and belief, is a true and complete return made in good faith for the accounting period as stated, pursuant to the Revenue Act of 1924 and the Regulations issued under authority thereof.

Executed and subscribed before me this 13th day of March, 1925.
Notary Public.

Mr. and Mrs. J. Kammerdiner, dba J. Kammerdiner
 (Signature of partner)

(Address of partner)

(Testimony of Dan O'Hanlon.)

Both Mrs. and Mr. Kammerdiner work in the business and agreement has been made that Mrs. Kammerdiner receives vested interest in one half of property and income, making hers separate property. ✓

[Endorsed]: Filed Dec. 29, 1941.

SCHEDULE A—INCOME FROM TRADE OR BUSINESS (See Instruction 1)

1. Total receipts from trade or business

COST OF GOODS SOLD	
2. Labor	\$
3. Material and supplies	
4. Merchandise bought for sale	
5. Other costs (Itemize below or on separate sheet)	
6. Plus inventory at beginning of year	
7. TOTAL (Lines 2 to 6, inclusive)	\$
8. Less inventory at end of year	
9. NET COST OF GOODS SOLD (Line 7 minus Line 8)	\$

OTHER BUSINESS DEDUCTIONS

10. Salaries, exclusive of "Labor" reported on Line 2, and exclusive of compensation for partners	\$
11. Interest on business indebtedness to others	
12. Taxes on business and business property	
13. Losses by fire, storm, etc. (explain in table provided therefor at foot of page)	
14. Bad debts arising from sales or professional services	
15. Depreciation, obsolescence, and depletion (explain in table provided therefor at foot of page)	
16. Rent, repairs, and other expenses (itemize below or on separate sheet)	
17. TOTAL (Lines 10 to 16, inclusive)	\$
18. TOTAL DEDUCTIONS (Line 9 plus Line 17)	\$
19. NET PROFITS (Line 1 minus Line 18) (Enter as Item 1)	\$

Explanation of deductions claimed on Lines 5 and 16.

SCHEDULE B—INCOME FROM RENTS AND ROYALTIES (See Instruction 4)

1. KIND OF PROPERTY	2. AMOUNT RECEIVED	3. COST	4. VALUE AS OF MARCH 1, 1913	5. DEPRECIATION (Explain on table at foot of page)	6. REPAIRS	7. OTHER EXPENSES (Explain on page)	8. NET PROFIT (Enter as Item 1)
	\$	\$	\$	\$	\$	\$	\$

Explanation of deductions claimed in Column 7.

SCHEDULE C—PROFIT FROM SALE OF REAL ESTATE, STOCKS, BONDS, ETC. (See Instruction 5)

1. KIND OF PROPERTY	2. DATE ACQUIRED	3. AMOUNT RECEIVED	4. DEPRECIATION ALLOWABLE SINCE ACQUISITION	5. COST	6. VALUE AS OF MARCH 1, 1913	7. SUBSEQUENT IMPROVEMENTS	8. NET PROFIT (Enter as Item 1)
		\$	\$	\$	\$	\$	\$

Note: how property was acquired.

SCHEDULE D—CAPITAL NET GAIN OR LOSS FROM SALE OF ASSETS HELD MORE THAN TWO YEARS (See Instruction 5a)

1. KIND OF PROPERTY	2. DATE ACQUIRED	3. DATE SOLD	4. AMOUNT RECEIVED	5. DEPRECIATION ALLOWABLE SINCE ACQUISITION	6. COST	7. VALUE AS OF MARCH 1, 1913	8. SUBSEQUENT IMPROVEMENTS AND CAPITAL IMPROVEMENTS	9. NET GAIN OR LOSS (Enter as Item 1)
	Mo. Day Year	Mo. Day Year	\$	\$	\$	\$	\$	\$

State how property was acquired.

EXPLANATION OF DEDUCTION FOR LOSSES BY FIRE, STORM, ETC., CLAIMED IN SCHEDULE A AND IN ITEM 9

1. KIND OF PROPERTY	2. DATE ACQUIRED	3. COST	4. VALUE AS OF MARCH 1, 1913	5. SUBSEQUENT IMPROVEMENTS	6. DEPRECIATION ALLOWABLE SINCE ACQUISITION	7. INSURANCE AND REPAIRS VALUE	8. DEDUCTIONS
		\$	\$	\$	\$	\$	\$

EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES A AND B

1. KIND OF PROPERTY (If buildings, state material of which constructed)	2. DATE ACQUIRED	3. AGE WHEN ACQUIRED	4. PROBABLE LIFE AFTER ACQUISITION	5. COST	6. VALUE AS OF MARCH 1, 1913	AMOUNT OF DEPRECIATION CHARGED	
						7. Previous years	8. This year
				\$	\$	\$	\$

AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules and statements (if any), has been examined by me, and, to the best of my knowledge and belief, is a true and complete return made in good faith for the accounting period as stated, pursuant to the Revenue Act of 1926 and the Regulations issued under authority thereof.

Sworn to and subscribed before me this 11 day of March 1927

Samuel H. H. H. Natany Rellie
(Signature of officer administering oath) (Witness)

J. K. K. K.
(Address of taxpayer)

(An amended return must be plainly marked "Amended" across face of return)

(Testimony of Dan O'Hanlon.)

1926 INCOME TAX RETURN OF PARTNERSHIP OF
MR. AND MRS. J. KAMMERDINER, DBA J.
KAMMERDINER, OF LOS ANGELES, CALIFOR-
NIA.

Received for rentals of Rotary Jars.....	50,431.41		
Mid-Continent Royalties	1,312.50		
San Joaquin Valley Royalties.....	3,345.00		
Foreign Sales	63,928.99		
Profit from Assemblies	844.53		
			<hr/>
			119,862.43✓
Cost of jars, cartage, freight, traveling expenses (hotels, etc.) entertaining clients, and adver- tising	40,249.89		
Salary and Commissions, paid.....	9,525.00		
Loss on Scanlon jars—			
Cost and expense....	916.75		
Royalty paid	90.00		
	<hr/>		
	1,006.75		
Rent and Sale.....	850.00	156.75	49,931.64✓
	<hr/>	<hr/>	<hr/>
			69,930.79✓
Auto Expenses (Business auto)			
Gas, oil, tires, repairs.....	1,155.81		
Depreciation	1,305.00		2,460.81✓
		<hr/>	<hr/>
			67,469.98✓
House 4861 Clinton Street(
Rents received	405.00		
Repairs, taxes, etc....	273.75		
4% on \$3500.00—			
Deprecen	140.00		
	<hr/>		
	413.75	Loss	8.75
			<hr/>
			67,461.23

(Testimony of Dan O'Hanlon.)

Rental 2½ acres Main Street.....	132.50	
Taxes and repairs.....	94.21	38.29
		<hr/>
		67,499.52✓
Taxes on investments—		
25 acre ranch, Int. and taxes	172.20	
Barnes City, ½ acre.....	15.66	
Taxes on Athens lot.....	1.86	
Lots on Manhattan Street.....	316.26	
St. Andrews Lot & House....	234.51	
Whittier Boulevard Lot.....	164.85	,905.34✓
	<hr/>	<hr/>
		66,594.18✓
Half to Mr. J. Kammerdiner.....	33,296.59	
Half to Mrs. J. Kammerdiner.....	33,296.59	

As explained in last year's report, both Mrs. Kammerdiner and Mr. Kammerdiner work in the business and agreement has been made that Mrs. Kammerdiner receives vested interest in one half of property and income, making hers separate property.

[Endorsed]: Filed Dec. 29, 1941.

DEFENDANT'S EXHIBIT NO. 21

FORM 1085
U. S. INTERNAL REVENUE
(Auditor's Stamp)

PARTNERSHIP RETURN OF INCOME For Calendar Year 1928

File This Return With the Collector of Internal Revenue for Your District on or Before March 15, 1929

PRINT PLAINLY NAME AND BUSINESS ADDRESS OF PARTNERSHIP

Mr. and Mrs. J. Kammerdiner, dba J. Kammerdiner.

(Name)

237 Highland Avenue, Los Angeles, Calif.

(Street and Number)

Makers of patent rotary jars for oil fields.

(Post office and State)

Kind of Business

Date of Organization January 1st 1925.

Do Not Write in These Spaces

File No. 206
Serial Number 475
Date Received 775

RECEIVED

MAR 15 1929

Copied 6-Copies

GROSS INCOME

1. Gross Receipts from Business or Profession Please see schedule attached \$290,800.55
2. Less Cost of Goods Sold:
 - (a) Inventory at beginning of year \$
 - (b) Merchandise bought for sale \$
 - (c) Cost of labor, supplies, etc. (From Schedule A) \$
 - (d) Total of Lines (a), (b), and (c) \$
 - (e) Less inventory at end of year Please see schedule attached 91,573.58
3. Gross Profit from Business or Profession (Item 1 minus Item 2) \$159,226.97
4. Income from Other Partnerships (State name and address)

Joint s/o Kammerdiner and wife, E. Albert, Maxine, Rickie and Wm. Kammerdiner.

1,433.40
5. Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except interest upon which a tax was paid at source) 3,511.31
6. Interest on Tax-free Covenant Bonds upon which a Tax was Paid at Source
7. Rents Please see schedule attached 174.59
8. Royalties
9. Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule B) 6,957.74
10. Dividends on Stock of Domestic Corporations 308.59
11. Other Income (including dividends on stock of foreign corporations). (State nature of income)

12. TOTAL INCOME IN ITEMS 3 TO 11 170,572.60

DEDUCTIONS

13. Salaries of Employees (Do not include compensation for partners) \$
14. Rent on Business Property
15. Repairs (From Schedule D)
16. Interest on Indebtedness
17. Taxes on Business Property (From Schedule E) City & County (Los Angeles) 1,752.40
18. Losses by Fire, Storm, etc. (From Schedule F)
19. Bad Debts (From Schedule G)
20. Depreciation, Obsolescence, and Depletion (From Schedule H)
21. Other Deductions Authorized by Law. (Explain below or on separate sheet)
22. TOTAL DEDUCTIONS IN ITEMS 13 TO 21 1,752.40
23. NET INCOME (Item 12 minus Item 22) 168,820.20

PARTNERS' SHARES OF INCOME AND CREDITS

(See Instruction 20)

1. NAME AND ADDRESS OF EACH PARTNER	2. PERCENTAGE OF NET INCOME	3. DIVIDENDS (ITEM 10 ABOVE)	4. EARNED INCOME	5. BALANCE OF NET INCOME (ITEM 23 MINUS SUM OF AMOUNTS IN COLUMNS 3 AND 4)	6. CAPITAL NET GAIN OR LOSS (INCLUDE U.S. C. CREDITS 9)	7. INCOME TAX PAID AT SOURCE (7% OF ITEM 5)	8. INCOME FROM OTHER SOURCES
(a) Mr. J. Kammerdiner.							
(b) 237 Highland Avenue,	50%	154.30	16,850.86	67,403.44			
(c) Los Angeles, Calif.							
(d) Mrs. J. Kammerdiner	50%	154.29	16,850.86	67,403.45			
(e) 237 Highland Avenue,							
(f) Los Angeles, Calif.							
(g)							
(h)							
(i)							
(j) TOTAL							

SCHEDULE A—INCOME FROM BUSINESS OR PROFESSION (See Instruction 2)

1. Total receipts from business or profession (state kind of business)			
COST OF GOODS SOLD		OTHER BUSINESS DEDUCTIONS	
2. Labor		10. Salary, exclusive of "Labor" reported on Line 2, and compensation for your own services	
3. Material and supplies		11. Interest on business indebtedness to others	
4. Merchandise bought for sale		12. Taxes on business and business property	
5. Other costs (itemize below or on separate sheet)		13. Losses by fire, storm, etc. (explain in table provided therefor at foot of page)	
6. Plus inventory at beginning of year		14. Bad debts arising from sales	
7. TOTAL (Lines 2 to 6, inclusive)		15. Depreciation, obsolescence, and depletion (explain in table provided therefor at foot of page)	
8. Less inventory at end of year		16. Rent, repairs, and other expenses (itemize below or on separate sheet)	
9. NET COST OF GOODS SOLD (Line 7 minus Line 8)		17. TOTAL (Lines 10 to 16, inclusive)	
		18. TOTAL DEDUCTIONS (Line 9 plus Line 17)	
		19. NET INCOME (Line 1 minus Line 18) (Enter as Item 2)	

Explanation of deductions claimed on Lines 5 and 16.

SCHEDULE B—INCOME FROM RENTS AND ROYALTIES (See Instruction 5)

1. KIND OF PROPERTY	2. AMOUNT RECEIVED	3. COST	4. VALUE AS OF MARCH 1, 1913	5. DEPRECIATION (Explain in table at foot of page)	6. REPAIRS	7. OTHER EXPENSES (Itemize below)	8. NET INCOME (Enter as Item 2)

Explanation of deductions claimed in Column 7.

SCHEDULE C—PROFIT FROM SALE OF REAL ESTATE, STOCKS, BONDS, ETC. (See Instruction 6)

1. KIND OF PROPERTY	2. DATE ACQUIRED	3. AMOUNT RECEIVED	4. DEPRECIATION PREVIOUSLY ALLOWED	5. COST	6. VALUE AS OF MARCH 1, 1913	7. SUBSEQUENT IMPROVEMENTS	8. NET PROFIT (Enter as Item 2)

State how property was acquired.

SCHEDULE D—CAPITAL NET GAIN OR LOSS FROM SALE OF ASSETS HELD MORE THAN TWO YEARS (See Instruction 6a)

1. KIND OF PROPERTY	2. DATE ACQUIRED Mo. Day Year	2. DATE SOLD Mo. Day Year	3. AMOUNT RECEIVED	4. DEPRECIATION PREVIOUSLY ALLOWED	5. COST	7. VALUE AS OF MARCH 1, 1913	8. SUBSEQUENT IMPROVEMENTS AND CAPITAL EXPENDITURES	9. NET GAIN OR LOSS (Enter net gain or loss from Item 2)

State how property was acquired.

SCHEDULE E—INTEREST ON LIBERTY BONDS AND OTHER OBLIGATIONS OR SECURITIES (See Instruction 8)

1. OBLIGATIONS OR SECURITIES	2. INTEREST RECEIVED OR ACQUIRED	3. AMOUNT OWNED	4. PRINCIPAL AMOUNT EXEMPT FROM TAXATION	5. AMOUNT OWNED IN EXCESS OF EXEMPTION	6. INTEREST ON AMOUNT IN EXCESS OF EXEMPTION (Enter as Item 2)
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia			All	XXXXXX XX	XXXXXX XX
(b) Securities issued under Federal Farm Loan Act, or under such Act as amended			All	XXXXXX XX	XXXXXX XX
(c) Liberty 3½% Bonds and other obligations of United States issued before Sept. 1, 1917, and obligations of possessions of the United States			All	XXXXXX XX	XXXXXX XX
(d) Liberty 4% and 4½% Bonds, Treasury 4½% Bonds, Treasury Certificates, and Treasury (War) Savings Certificates			\$5,000		
(e) Liberty 4% and 4½% Bonds			\$50,000		
(f) Treasury Notes			None		

EXPLANATION OF DEDUCTION FOR LOSSES BY FIRE, STORM, ETC., CLAIMED IN SCHEDULE A, AND IN ITEM 13

1. KIND OF PROPERTY	2. DATE ACQUIRED	3. COST	4. VALUE AS OF MARCH 1, 1913	5. SUBSEQUENT IMPROVEMENTS	6. DEPRECIATION PREVIOUSLY ALLOWED	7. INSURANCE AND SALVAGE VALUE	8. NET LOSS (Enter as Item 1)

EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES A AND B

1. KIND OF PROPERTY (If buildings, state material of which constructed)	2. DATE ACQUIRED	3. AGE WHEN ACQUIRED	4. ESTIMABLE LIFE AFTER ACQUISITION	5. COST	6. VALUE AS OF MARCH 1, 1913	7. PREVIOUS YEARS	8. THIS YEAR

SCHEDULE F—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 1, 12, 14, AND 15

AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules and statements (if any), has been examined by me, and, to the best of my knowledge and belief is a true and complete return made in good faith for the taxable year as stated, pursuant to the Revenue Act of 1924 and the Regulations issued under authority thereof.

(If return is made by agent, the reason therefor must be stated on this line)

Sworn to and subscribed before me this 13/ day of March, 1924

(Signature of officer administering oath)

Notary Public.

(Signature of individual or agent)

(Address of individual or agent)

[Endorsed]: Filed Dec. 29, 1941

(Testimony of Dan O'Hanlon.)

1928 INCOME TAX RETURN OF PARTNERSHIP OF MR. AND MRS. J. KAMMERDINER, DBA
J. KAMMERDINER, OF LOS ANGELES, CALIF.

Both Mr. and Mrs. Kammerdiner work in the business and agreement had been made that Mrs. Kammerdiner receives vested interest in one-half of the property and income, making hers separate property and income. This is the fourth year return has been made on Partnership basis.

Income:—

Cash received on rentals.....	127,120.17✓
foreign sales	115,159.00✓
Mid-Continent royalties rentals.....	1,162.50✓
San Jouquin Valley royalties rentals.....	3,790.54✓
Wyoming and Montana royalties rentals.....	706.92✓
Rentals Royalties on assemblies.....	1,598.00✓
Ranch at Olive.....	2,592.74
Labor, taxes, etc.....	1,109.32
Depreciation	160.00
	<hr/>
	1,269.32
	<hr/>
	1,323.42
	<hr/>
	250,860.55
	<hr/>
	1,323.42*
	<hr/>
	249,537.13*

(Testimony of Dan O'Hanlon.)

1928 Income Tax Return of Partnership of Mr. and Mrs. J. Kammerdiner, dba J. Kammerdiner, of Los Angeles, Calif.—(Continued)

Expenses:—

Cash paid for Manufacturing & Repairs.....	65,189.62✓
for general expenses, advertising, etc.....	6,973.63
A. C. Bainbridge, Com. & Exs.....	16,475.00✓
Auto exs, gas, oil, repairs.....	1,011.17✓
Auto Deprecn. 25% on 4800.00 for 11½ months	1,166.66✓
Loss on sale of auto.....	5220.00
Deprecn taken	3262.50

1957.50	
Allowed Jan. 9, 1928.....	757.50✓

91,573.58

89,187.98*

2,385.60*

\$159,286.97

160,349.15*

Carried to return Business....

Income from rentals—

2½ acres Main St. Rent..... 37.50

Taxes 65.68

—28.18 Loss

(Testimony of Dan O'Hanlon.)

1928 Income Tax Return of Partnership of Mr. and Mrs. J. Kammerdiner, dba J. Kammerdiner, of Los Angeles, Calif.—(Continued)

4861 Clinton St.	Rent.....	440.00		
	Taxes, repairs, water	96.50		
	Deprecen.....4%	2500.....	100.00	
				243.50 Gain
25 acre Ranch at Olinda			196.50	
	Taxes		61.56	
	Rent recd		20.83	
			—40.73	
			<hr/>	
			68.91	
			<hr/>	
			243.50	
			68.91	
			<hr/>	
			\$174.59	
	Carried to return.....	Rentals.....		

*[Printer's Note]: Indicates figures penciled in typewritten sheet.

[Endorsed]: Filed Dec. 29, 1941.

(Testimony of Dan O'Hanlon.)

Q. I hand you certified copy of partnership return of income for the calendar year 1925, taxpayers "Mr. and Mrs. J. Kammerdiner dba J. Kammerdiner," and ask whether you made that partnership return for the year 1925.

A. Yes, I did.

Q. And who asked you to make it that year?

A. Well, I believe they came together every time they came.

Q. It is signed by Mrs. J. Kammerdiner. There is "Mr. and Mrs. J. Kammerdiner, dba J. Kammerdiner" in typewriting and then below it is signed "Mrs. J. Kammerdiner."

A. Mrs. Kammerdiner always brought the figures down.

Q. Mrs. Kammerdiner you say? A. Yes.

Q. Then defendant's Exhibit 20, the partnership return of income for the calendar year of 1926, "Mr. and Mrs. J. Kammerdiner dba J. Kammerdiner." Do you know why you included the income from the Clinton Street property and the Main Street property as a part of the partnership return for 1926; do you remember that?

Mr. Bloom: Objected to as incompetent, irrelevant and immaterial.

The Court: Overruled. [123]

The Witness: Well, all the information on the returns I get from the taxpayers themselves.

By Mr. Mitchell:

Q. Was that given to you by Mr. or Mrs. Kammerdiner? A. Mrs. Kammerdiner.

(Testimony of Dan O'Hanlon.)

Q. Now the 1928 partnership return, this is defendant's Exhibit 21, partnership return of income for the calendar year of 1928, "Mr. and Mrs. J. Kammerdiner, dba J. Kammerdiner." I will ask you whether you recall making out this return for the taxpayers.

A. Yes. That is my signature here.

Q. You notarized it? A. Yes.

Q. That was made out in what year? It is dated February, 1929.

A. Well, of course, all the taxes—income tax returns are made out between the 1st of January and the 15th of March.

Q. And they are for the previous calendar year?

A. Yes. [124]

Q. Did they mention to you their joint tenancy agreement, so-called, of 1928?

A. I couldn't remember that. I don't remember that.

Q. You don't recall that? A. No, sir.

Mr. Mitchell: I now offer in evidence a certified copy of the individual income tax return of Mr. Kammerdiner for the year 1925.

The Court: All right. It will be received.

Mr. Mitchell: Also Mr. Kammerdiner for the year 1925. These might be introduced as a single Exhibit.

The Court: All right.

Mr. Mitchell: And then perhaps they can be fastened together. [125]

(Testimony of Dan O'Hanlon.)

I offer a group of individual income tax returns, one for Mrs. Kammerdiner for the year 1925; one for——

The Court: I think you had better make them separate Exhibits, it would be easier to handle.

Mr. Mitchell: That one will be marked defendant's Exhibit 22.

The Clerk: What is the date of it?

Mr. Mitchell: The year 1925.

The Clerk: That will be 22.

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 22.")

DEFENDANT'S EXHIBIT NO. 22

FORM 1040
U. S. INTERNAL REVENUE
(Auditor's Stamp)

INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES OF MORE THAN \$5,000

OR NET INCOMES, REGARDLESS OF AMOUNT, IF DERIVED FROM A PROFESSION OR BUSINESS, INCLUDING PARTNERSHIP

For Calendar Year 1924

If Your Income is Computed on a Fiscal Year Basis, or Income is Received from a Partnership or Fiduciary Computed on a Fiscal Year Basis, Form 1040-F Should be Secured from the Collector and Filled in Lieu of This Form

File This Return with the Collector of Internal Revenue for Your District on or Before March 15, 1925
(PRINT NAME AND ADDRESS PLAINLY BELOW)

Mrs. J. Kammerdiner

237 South Highland Avenue

(Street and number, or rural route)

Los Angeles, California

(Post office)

(County)

(State)

Check Check M. C. Court of Ind.

OCCUPATION, PROFESSION, OR KIND OF BUSINESS Partner in Rotary Jar Business (Oil Field Patent).

- Are you a citizen or resident of the United States? ☒ Yes
- If you filed a return for 1923, to what Collector's office was it sent? ☐ No
- Is this a joint return of husband and wife? ☐ No
- Were you married and living with husband or wife during 1924? ☒ Yes
- If not, were you on the last day of your taxable year supporting one or more persons living in your household who are closer to you by blood, marriage, or adoption? ☐ No
- If your status in respect to questions 4 and 5 changed during your taxable year, state date of such change.
- How many dependent persons (other than husband or wife) under 18 years of age or incapable of self support because mentally or physically defective were receiving their chief support from you on the last day of your taxable year? ☐ Three

INCOME

1. Salaries, Wages, Commissions, etc. (State name and address of employer if here retained)

- Income from Business or Profession. (From Schedule A)
- Interest on Bank Deposits, Corporation Bonds, etc. (except interest upon which a tax was paid at source)

(a) Interest on Tax-free Covenant Bonds Upon Which a Tax was Paid at Source

4. Income from Partnerships, Fiduciaries, etc. (State name and address of partnership, etc.)

Mr. and Mrs. J. Kammerdiner, dba J. Kammerdiner, Los Angeles, Calif. 26,674.82

5. Dividends and Royalties. (From Schedule D)

6. Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule C)

7. Dividends on Stock of Domestic Corporations

289.41

8. Taxable Interest on Liberty Bonds, etc. (From Schedule E)

9. Other Income (including dividends received on stock of foreign corporations). (State nature of income)

TOTAL INCOME IN ITEMS 1 TO 9

DEDUCTIONS

11. Interest Paid

12. Taxes Paid. (Explain in Schedule F)

13. Losses by Fire, Storm, etc. (Explain in Table on page 2)

14. Bad Debts. (Explain in Schedule F)

15. Contributions. (Explain in Schedule F)

Church of Christ Scientist

150.00

16. Other Deductions Authorized by Law. (Explain below or on separate sheet)

TOTAL DEDUCTIONS IN ITEMS 11 TO 16

18. NET INCOME (Item 10 minus Item 17)

COMPUTATION OF TAX (See instruction 22 on revised)

1. Earned Net Income (not over \$20,000)	5000.00	30. Net Income (Item 18 on return)	26,814.23	41. Normal Tax (1 1/2% of Item 37)	60.00
2. Less Personal Exemption and Credit for Dependents	2000.00	31. Less Dividends (Item 7 on return)	289.41	42. Normal Tax (3% of Item 39)	120.00
3. Balance (Item 19 minus 20)	3000.00	32. Interest on Liberty Bonds, etc. (Item 8)		43. Normal Tax (5% of Item 40)	826.24
4. Amount taxable at 1 1/2% (not over the first \$4,000 of Item 21)	3000.00	33. Personal Exemption	2000.00	44a. Surtax on Item 18 (see Instruction 22 as revised)	637.00
5. Amount taxable at 3% (not over the second \$4,000 of Item 21)		34. Credit for Dependents		44b. Tax on Net Income (total of Items 41, 42, 43, and 44)	1643.24
6. Amount taxable at 5% (balance over \$8,000 of Item 21)		35. Total of Items 31, 32, 33, and 34		45. Adjustment for Capital Gain or Loss (25% of Columns 9, Schedule D)	
7. Normal Tax (1 1/2% of Item 22)	45.00	36. Balance (Item 30 minus 35)	24,524.82	46. Total of or difference between Items 44a and 45	
8. Normal Tax (3% of Item 23)		37. Amount taxable at 1 1/2% (not over the first \$4,000 of Item 36)	4,000.00	47. Less Credit of 25% of Tax on Earned Net Income (Item 29)	11.25
9. Normal Tax (5% of Item 24)		38. Balance (Item 36 minus 37)	20,524.82	48. Total Tax (Item 46 minus 47)	1631.99
10. Surtax on Item 19		39. Amount taxable at 3% (not over the second \$4,000 of Item 36)	4,000.00	49. Less Income Tax paid at source (25% of Item 3e)	
11. Tax on Earned Net Income (total of Items 25, 26, 27, and 28)		40. Amount taxable at 5% (balance over \$8,000 of Item 36)	16,524.82	50. Income and Credit Taxes paid to a foreign country or U. S. possession (Items 49 and 50)	
12. Credit of 25% of Item 29 (not over 25% of Items 28, 31, 42 and 43)	11.25			51. Balance of Tax (Item 48 minus 49 and 50)	1631.99

NOTE 1. The above instructions and computation are for the year 1924.

SCHEDULE A—COST OF LABOR, SUPPLIES, ETC. (See Instruction 3)

ITEMS	AMOUNT	ITEMS	AMOUNT (Enter as item 2)
Labor	\$		\$
Supplies			

SCHEDULE B—PROFIT FROM SALE OF REAL ESTATE, STOCKS, BONDS, ETC. (See Instruction 9)

1. KIND OF PROPERTY	2. DATE ACQUIRED	3. AMOUNT RECEIVED	4. DEPRECIATION ALLOWABLE SINCE ACQUISITION	5. COST	6. VALUE AS OF MARCH 1, 1913	7. SUBSEQUENT IMPROVEMENTS	8. NET PROFIT (Enter as item 3)
San Martin's stock	1928	\$21,373.64		\$5,258.54	\$	\$	\$6,115.10
SUN PARK OIL CO.		240.64		300.00			LOSS 59.36
							GAIN 6,055.74

State how property was acquired by purchase for cash

SCHEDULE C—CAPITAL NET GAIN OR LOSS FROM SALE OF ASSETS HELD MORE THAN TWO YEARS (See Instruction 9a)

1. KIND OF PROPERTY	2. DATE ACQUIRED	3. DATE SOLD	4. AMOUNT RECEIVED	5. DEPRECIATION ALLOWABLE SINCE ACQUISITION	6. COST	7. VALUE AS OF MARCH 1, 1913	8. SUBSEQUENT IMPROVEMENTS, AND CAPITAL DEDUCTIONS	9. NET GAIN (Enter in Column 6, of table on page 1)
	Mo. Day Year	Mo. Day Year	\$	\$	\$	\$	\$	\$

State how property was acquired

SCHEDULE D—COST OF REPAIRS (See Instruction 15)

1. ITEMS	2. AMOUNT (Enter as item 1)
	\$

SCHEDULE E—TAXES PAID (See Instruction 17)

1. ITEMS	2. AMOUNT (Enter as item 17)
	\$

SCHEDULE F—EXPLANATION OF LOSSES BY FIRE, STORM, ETC. (See Instruction 18)

1. KIND OF PROPERTY	2. DATE ACQUIRED	3. COST	4. VALUE AS OF MARCH 1, 1913	5. SUBSEQUENT IMPROVEMENTS	6. DEPRECIATION ALLOWABLE SINCE ACQUISITION	7. INSURANCE AND SALVAGE VALUE	8. DEDUCTIBLE LOSS (Enter as item 18)
		\$	\$	\$	\$	\$	\$

State how property was acquired

SCHEDULE G—EXPLANATION OF DEDUCTION FOR BAD DEBTS (See Instruction 19)

	Year	Cash or a/c	Ind. Debt
(a)	1925	\$	\$
(b)	1926		
(c)	1927		
(d)	1928		

SCHEDULE H—EXPLANATION OF DEDUCTION FOR DEPRECIATION (See Instruction 20)

1. KIND OF PROPERTY (If buildings, state material of which constructed)	2. DATE ACQUIRED	3. AGE WHEN ACQUIRED	4. PROBABLE LIFE AFTER ACQUISITION	5. COST (Exclusive of Land)	6. VALUE AS OF MARCH 1, 1913 (Exclusive of Land)	AMOUNT OF DEPRECIATION CHARGED OFF
				\$	\$	7. Previous years
						8. This year

SCHEDULE I—NONTAXABLE OBLIGATIONS, LIBERTY BONDS, ETC.

1. OBLIGATIONS OR SECURITIES	2. AMOUNT OWED	3. INTEREST RECEIVED
(a) Obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia	\$	\$
(b) Securities issued under the provisions of the Federal Farm Loan Act, or under such Act as amended		
(c) Liberty 3½% Bonds and other obligations of United States issued before Sept. 1, 1917, and obligations of United States possessions		
(d) Liberty 4% and 4½% Bonds and other obligations of the United States issued after September 1, 1917		

AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules and statements (if any), has been examined by me, and, to the best of my knowledge and belief, is a true and complete return made in good faith for the accounting period as stated, pursuant to the Revenue Act of 1928 and the Regulations issued under authority thereof.

Mr. and Mrs. J. J. Amador, Jr. J. J. Amador, Jr.

Signed and subscribed before me this 23rd day of February, 1929.

Signature of officer administering oaths

Notary Public.

(An amended return must be plainly marked "Amended" across face of return)

(Address of partner)

3-14088

(Testimony of Dan O'Hanlon.)

Mr. Mitchell: Also the individual income tax return for the calendar year 1925 for Mr. Kammerdiner, which is signed "J. Kammerdiner by Mrs. J. Kammerdiner."

The Clerk: That will be 23.

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 23.") [126]



DEFENDANT'S EXHIBIT NO. 23

Form 1040
 INTERNAL REVENUE
 (Author's Name)
 none
 4220.70
 21025
 724

INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES OF MORE THAN \$5,000

For Calendar Year 1924

If You Were Married, Indicate on a First Year Basis, or Income is Received from a Partnership or Fiduciary, Completed
 the First Year Basis Form 1040FT Should be Secured from the Collector and Filed in Lieu of This Form

File This Return with the Collector of Internal Revenue for Your District on or Before March 15, 1925
 PRINT NAME AND ADDRESS PLAINLY BELOW

J. Kammerdiner
 10709 of Clinton St., Box of 27, Los Angeles, Cal.
 (Street and number, or rural route)
 Los Angeles, Calif. 900

Do Not Write in These Spaces

File Code 206
 Serial Number 1
 First Payment 5
 Estimated 7800
 (Collector's Name)

OCCUPATION, PROFESSION, OR KIND OF BUSINESS

- Are you a citizen or resident of the United States? Yes
- If you filed a return for 1923, what Collector's office was it sent? Los Angeles
- Is this a joint return of husband and wife? No
- Were you married and living with husband or wife on the last day of your taxable year? Yes
- If not, were you on the last day of your taxable year supporting one or more persons living in your household who are closely related to you by blood, marriage, or adoption? No
- How many dependent persons (other than husband or wife) under 18 years of age or incapable of self-support because mentally or physically defective were receiving their chief support from you on the last day of your taxable year? 22000.00 exemption tax of 1126.

INCOME

- Salary, Wages, Commissions, etc. (State name and address of person from whom received)
 B. A. R. ATT'D. TO 1000
 25,674.82
- Income from Business or Profession. (From Schedule 1)
- Interest on Bank Deposits, Corporation Bonds, etc. (except interest upon tax-free Covenant Bonds Upon Which a Tax was Paid at Source)
- Income from Partnerships, Fiduciaries, etc. (State name and address of partnership, etc.)
 Mr. and Mrs. Kammerdiner, 200 J. Kammerdiner
 Joint Account A. Mitchell, Kammerdiner, 30 Cart
 2,817.89
- Rents and Royalties. (From Schedule 2)
- Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule 3)
- Dividends on Stock of Domestic Corporations
- Taxable Interest on Liberty Bonds, etc. (From Schedule 2)
- Other Income (including dividend is received on stock of foreign corporations) (State nature of income)
 289.41

U.S. BOARD OF TAX APPEALS
 DIV. 8, DOCKET
 JUN 10 1931
 PETITIONER'S EXHIBIT

TOTAL INCOME IS ITEMS 1 TO 9

DEDUCTIONS

- Interest Paid
- Taxes Paid. (Explain in Schedule F)
- Losses by Fire, Storm, etc. (Explain in Table on page 2)
- Bad Debts. (Explain in Schedule F)
- Contributions. (Explain in Schedule F)
- Other Deductions Authorized by Law. (Explain below or on a separate sheet)
 (a)
 (b)
 (c)
- TOTAL DEDUCTIONS IN ITEMS 11 TO 15
- NET INCOME (Item 10 minus Item 15)

COMPUTATION OF TAX (See Instruction 23 as revised)

19. Landed Net Income, not over \$20,000	\$5000.00	30. Net Income (Item 18 on return)	\$29782.12	41. Normal Tax (1 1/2% of Item 37)	\$446.73
20. Less Personal Exemption and Credit for Dependents	2700.00	31. Less Dividends (Item 7 on return)	\$289.41	42. Normal Tax (3 1/2% of Item 39)	24.00
21. Balance (Item 19 minus 20)	\$2300.00	32. Interest on Liberty Bonds, etc. (Item 8)		43. Normal Tax (5% of Item 40)	55.03
22. Amount taxable at 1 1/2% (not over the first \$4,000 of Item 21)		33. Personal Exemption (2700.00)		44. Surtax on Item 18 (see Instruction 22 as revised)	8.27
23. Amount taxable at 3 1/2% (not over the second \$4,000 of Item 21)		34. Credit for Dependents		45. Tax on Net Income (Total of Items 41, 42, 43, and 44)	1982.26
24. Amount taxable at 5% (balance over \$8,000 of Item 21)		35. Total of Items 31, 32, 33, and 34	2989.41	46. Adjustment for Capital Gain or Loss (2 1/2% of Column 9, Schedule 19)	
25. Normal Tax (1 1/2% of Item 22)	\$34.50	36. Balance (Item 30 minus 35)	26792.71	47. Total of or difference between Items 44 and 45	
26. Normal Tax (3 1/2% of Item 23)		37. Amount taxable at 1 1/2% (not over the first \$4,000 of Item 36)	3000.00	48. Less Credit of 25% of Tax on Excess Net Income (Item 29)	6.68
27. Normal Tax (5% of Item 24)		38. Balance (Item 36 minus 37)	26792.71	49. Total Tax (Item 46 minus 47)	
28. Surtax on Item 19		39. Amount taxable at 3 1/2% (not over the second \$4,000 of Item 36)	4000.00	50. Income and Profits Taxes paid to foreign countries or U.S. possessions (Item 49 of Form 1040)	
29. Credit of 45% of Item 28 (not over 25% of Items 26, 41, 42, and 43)	8.62	40. Amount taxable at 5% (balance over \$8,000 of Item 36)	18792.71		

NOTE - The above Instructions and Computation of Tax should be retained with the duplicate copy of your return, the following copy must be secured and securely affixed at the foot of the first page of your original return and filed with the Collector of Internal Revenue for your district.

SCHEDULE A—INCOME FROM BUSINESS OR PROFESSION (See Instruction 2)

1. Total receipts from business or profession (state kind of business)		Other Business Deductions	
Cost of Goods Sold		10. Salaries, exclusive of Labor reported on Line 2, and compensation for your own services	
2. Labor		11. Interest on business indebtedness to others	
3. Material and supplies		12. Taxes on business and business property	
4. Merchandise bought for sale		13. Losses by fire, storm, etc. (explain in table provided therefor at foot of page)	
5. Other costs (itemize below or on separate sheet)		14. Bad debts arising from sales	
6. Plus inventory at beginning of year		15. Depreciations (state basis and depletion (explain in table provided therefor at foot of page))	
7. Total (Lines 2 to 6, inclusive)		16. Rent, repairs, and other expenses itemized below or on separate sheet	
8. Less inventory at end of year		17. Total (Lines 10 to 16, inclusive)	
9. NET COST OF GOODS SOLD (Line 7 minus Line 8)		18. Total Deductions (Line 9 plus Line 17)	
		19. NET INCOME (Line 1 minus Line 18) (Enter as Item 2)	

Explanation of deductions claimed on Lines 5 and 16

SCHEDULE B—INCOME FROM RENTS AND ROYALTIES (See Instruction 5)

1. KIND OF PROPERTY	2. AMOUNT RECEIVED	3. COST	4. VALUE AS OF MARCH 1, 1913	5. DEPRECIATION (Furnish a table showing actual depreciation)	6. REPAIRS	7. OTHER EXPENSES (Itemize below)	8. NET INCOME (Profit or Loss)
---------------------	--------------------	---------	------------------------------	---	------------	-----------------------------------	--------------------------------

Explanation of deductions claimed in Column 7

SCHEDULE C—PROFIT FROM SALE OF REAL ESTATE, STOCKS, BONDS, ETC. (See Instruction 6)

1. KIND OF PROPERTY	2. DATE ACQUIRED	3. AMOUNT RECEIVED	4. DEPRECIATION (Furnish a table showing actual depreciation)	5. COST	6. VALUE AS OF MARCH 1, 1913	7. NET PROFIT (Loss)	8. NET INCOME (Profit or Loss)
---------------------	------------------	--------------------	---	---------	------------------------------	----------------------	--------------------------------

State how property was acquired

SCHEDULE D—CAPITAL NET GAIN OR LOSS FROM SALE OF ASSETS HELD MORE THAN TWO YEARS (See Instruction 7)

1. KIND OF PROPERTY	2. DATE ACQUIRED	3. DATE SOLD	4. AMOUNT RECEIVED	5. DEPRECIATION (Furnish a table showing actual depreciation)	6. COST	7. NET PROFIT (Loss)	8. NET INCOME (Profit or Loss)
---------------------	------------------	--------------	--------------------	---	---------	----------------------	--------------------------------

State how property was acquired

SCHEDULE E—INTEREST ON LIBERTY BONDS AND OTHER OBLIGATIONS OR SECURITIES (See Instruction 8)

1. OBLIGATIONS OR SECURITIES	2. INTEREST RECEIVED	3. AMOUNT OWNED	4. PRINCIPAL AMOUNT PAID FOR TAXATION	5. AMOUNT FORN IN PAYMENT OF EXEMPTIONS	6. NET INCOME (Profit or Loss)
(a) Obligations of a State, Territory, or Possession thereof, or of the District of Columbia			All	XXXXXX XX XXXXXX XX	
(b) Securities issued under Federal Farm Loan Act or under such Act as amended			All	XXXXXX XX XXXXXX XX	
(c) Liberty 3½%, 4%, and 4½% Bonds and other obligations of the United States (Before Sept. 1, 1917, and after Sept. 1, 1917, as distinguished)			All	XXXXXX XX XXXXXX XX	
(d) Liberty 4% and 4½% Bonds, Treasury 4½% Bonds, Treasury Certificates, and Treasury War Savings Certificates			\$5,000	\$	
(e) Liberty 4½% and 4½% Bonds			\$50,000		
(f) Treasury Notes			None		

EXPLANATION OF DEDUCTION FOR LOSSES BY FIRE, STORM, ETC., CLAIMED IN SCHEDULE A, AND IN ITEM 13

1. KIND OF PROPERTY	2. DATE ACQUIRED	3. COST	4. VALUE AS OF MARCH 1, 1913	5. DEPRECIATION (Furnish a table showing actual depreciation)	6. INSURANCE AND OTHER EXPENSES	7. NET INCOME (Profit or Loss)
---------------------	------------------	---------	------------------------------	---	---------------------------------	--------------------------------

EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES A AND B

1. KIND OF PROPERTY	2. DATE ACQUIRED	3. A & W AS OF MARCH 1, 1913	4. DEPRECIATION (Furnish a table showing actual depreciation)	5. COST	6. VALUE AS OF MARCH 1, 1913	7. NET INCOME (Profit or Loss)
---------------------	------------------	------------------------------	---	---------	------------------------------	--------------------------------

SCHEDULE F—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 1, 12, 14, AND 15

AFFIDAVIT

I swear or affirm that this return, including the accompanying schedules and statements of any, has been examined by me, and, to the best of my knowledge and belief, is a true and complete return made in good faith for the taxable year as stated, pursuant to the Revenue Act of 1921 and the Regulations issued under authority thereof.

Sworn to and submitted to me this 15th day of March 1924
J. J. [Signature]
Notary Public.
J. H. [Signature]
Notary Public.
J. H. [Signature]
Notary Public.

(Testimony of Dan O'Hanlon.)

INCOME TAX RETURN FOR 1925 OF J. KAMMERDINER, OF LOS ANGELES, CALIFORNIA

Statement showing income and expenses of Orange Grove owned jointly by W. R. Ritchie, Wm. Kammerer, J. Kammerdiner, and T. McCart, of Fullerton and Los Angeles, Calif.

Received from Packing House, after deducting picking, hauling and fumigating charges.....	\$13,495.51
Received for oil	199.62
	<hr/>
	13,695.13

Expenses—

Taxes	326.00	
Cultivating, etc.	800.00	(9)
Water	480.00	
Fertilizer	326.56	
Extra Labor	178.00	
Depreciation	212.00	2,422.56
	<hr/>	<hr/>
		\$11,271.57

Depreciation 3% on \$6750.00 (15 acres at 450.00 an acre) \$11,271.57 divided equally between four, each receiving \$2,817.89✓

[Endorsed]: Filed Dec. 29, 1941.

Mr. Mitchell: Then the individual income tax return of Mrs. Kammerdiner for the year 1926.

The Clerk: 24.

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 24.")

Form 1040
INTERNAL REVENUE
(Auditor's Stamp)

INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES OF MORE THAN \$5,000
OR NET INCOMES, REGARDLESS OF AMOUNT, IF DERIVED FROM A PROFESSION OR BUSINESS, INCLUDING FARMING

For Calendar Year 1926

File This Return With the Collector of Internal Revenue for Your District on or Before March 15, 1927

(PRINT NAME AND ADDRESS PLAINLY BELOW)

MRS. J. KAMMERLINER

237 SO. HIGHLAND AVENUE

LOS ANGELES, LOS ANGELES, CALIFORNIA.

(Post office)

(County)

(State)

Do Not Write in These Spaces

File
CodeSerial
Number

(Cashier's Stamp)

Cash Check, M. O. Cert. of Ind.

First Payment

S
Credited

As

OCCUPATION, PROFESSION, OR KIND OF BUSINESS

PARTNER IN ROTARY JAR BUSINESS (OIL FIELDS)

1. Are you a citizen or resident of the United States? **YES**
2. If you filed a return for 1925, was it sent? **LOS ANGELES.**
3. Is this a joint return? **NO**
4. Name of husband or wife if a separate return was made and the Collector's office where it was sent **M. J. KAMMERLINER**

LOS ANGELES.

NO

M. J. KAMMERLINER

AS ABOVE

5. Were you married and living with husband or wife on the last day of your taxable year? **YES**
6. If not, were you on the last day of your taxable year supporting up or more persons living in your household who are closely related to you?
7. If your status in respect to questions 5 and 6 changed during the year, state date of such change
8. How many dependent persons (other than husband or wife under 18 years of age or incapable of self-support because mentally or physically defective) were receiving their chief support from you on the last day of your taxable year?

husband.

Item and

Inclusive To

INCOME

Amount received

Expense paid (Explain in Schedule F)

1. Salary, Wages, Commissions, etc. (State name and address of person from whom received)

2. Income from Business or Profession. (From Schedule A)

3. Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except interest upon which a tax was paid at source)

- (a) Interest on Tax-free Covenant Bonds Upon Which a Tax was Paid at Source

4. Income from Partnerships, Fiduciaries, etc. (State name and address of partnership, etc.)

J. Kammerlinery, Los Angeles, Calif.

earned

26,724.08

6,681.01

5. Rents and Royalties. (From Schedule B)

6. Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule C)

7. Dividends on Stock of Domestic Corporations

388.75

8. Taxable Interest on Liberty Bonds, etc. (From Schedule E)

9. Other Income (including dividends received on stock of foreign corporations). (State nature of income)

(a)

(b)

(c)

10. TOTAL INCOME IN ITEMS 1 TO 9

23,773.84

DEDUCTIONS

11. Interest Paid

12. Taxes Paid. (Explain in Schedule F)

13. Losses by Fire, Storm, etc. (Explain in Table on page 7)

14. Bad Debts. (Explain in Schedule F)

15. Contributions. (Explain in Schedule F) First Church of Christ Scientist

200.00

16. Other Deductions Authorized by Law. (Explain below or on separate sheet)

(a)

(b)

(c)

17. TOTAL DEDUCTIONS IN ITEMS 11 TO 16

200.00

18. NET INCOME (Item 10 minus Item 17)

23,573.84

COMPUTATION OF TAX (See Instruction 21)

19. Earned Net Income (not over \$20,000)

6,681.01

20. Less Personal Exemption and Credit for Dependents (see Instruction 20)

1,750.00

21. Balance (Item 19 minus 20)

4,931.01

22. Amount taxable at 1 1/2% (not over the first \$4,000 of Item 21)

4,000.00

23. Amount taxable at 2% (not over the second \$4,000 of Item 21)

931.01

24. Amount taxable at 5% (balance over \$8,000 of Item 21)

0.00

25. Normal Tax (1 1/2% of Item 22)

60.00

26. Normal Tax (3% of Item 23)

27.83

27. Normal Tax (5% of Item 24)

0.00

28. Surplus on Item 19 (see Instruction 21)

0.00

29. Tax on Earned Net Income (total of Items 25, 26, 27, and 28)

87.83

30. Credit of 25% of Item 29 (not over 25% of Items 25, 26, 27, and 28)

21.96

31. Net Income (Item 18 above)

23,573.84

32. Less Dividends (Item 7 above)

388.75

33. Interest on Liberty Bonds, etc. (Item 8)

0.00

34. Personal Exemption

1,750.00

35. Credit for Dependents

0.00

36. Total of Items 32, 33, 34, and 35

2,138.75

37. Balance (Item 31 minus 36)

21,435.09

38. Amount taxable at 1 1/2% (not over the first \$4,000 of Item 37)

4,000.00

39. Balance (Item 37 minus 38)

17,435.09

40. Amount taxable at 3% (not over the second \$4,000 of Item 37)

4,000.00

41. Amount taxable at 5% (balance over \$8,000 of Item 37)

23,435.09

42. Normal Tax (1 1/2% of Item 38)

60.00

43. Normal Tax (3% of Item 40)

120.00

44. Normal Tax (5% of Item 41)

1,172.76

45. Surplus on Item 18 (see Instruction 21)

1,181.65

46. Tax on Net Income (total of Items 42, 43, 44, and 45)

2,953.41

47. Less Credit of 25% of Tax on Earned Net Income (Item 30)

21.96

48. Balance (Item 46 minus 47)

2,931.45

49. Adjustment for Capital Gain or Loss (12 1/2% of Column 9, Schedule D)

712.43

50. Total Tax (total of or difference between Items 48 and 49)

3,643.88

51. Less Income Tax Paid at Source

3,600.00

52. Income and Profits Taxes paid to a foreign country or U. S. possession

0.00

53. Balance of Tax (Item 50 minus Items 51 and 52)

43.88

An amended return must be marked "Amended" at top of return

Checks and drafts will be accepted only if payable per

SCHEDULE A—INCOME FROM BUSINESS OR PROFESSION (See Instruction 7)

1. Total receipts from business or profession (state kind of business) _____		OTHER BUSINESS DEDUCTIONS	
Cost of Goods Sold _____		10. Salaries, exclusive of "Labor" reported on Line 2, and exclusive of compensation for your services _____	
2. Labor _____	\$ _____	11. Interest on business indebtedness to others _____	
3. Material and supplies _____	\$ _____	12. Taxes on business and business property _____	
4. Merchandise bought for sale _____	\$ _____	13. Losses by fire, storm, etc. (explain in table provided therefor at foot of page) _____	
5. Other costs (itemize below or on separate sheet) _____	\$ _____	14. Bad debts arising from sales _____	
6. Plus inventory at beginning of year _____	\$ _____	15. Depreciation, obsolescence, and depletion (explain in table provided therefor at foot of page) _____	
7. Total (Lines 2 to 6, inclusive) _____	\$ _____	16. Rent, repairs, and other expenses (itemize below or on separate sheet) _____	
8. Less inventory at end of year _____	\$ _____	17. Total (Lines 10 to 16, inclusive) _____	
9. Net Cost of Goods Sold (Line 7 minus Line 8) _____	\$ _____	18. TOTAL DEDUCTIONS (Line 9 plus Line 17) _____	
		19. NET PROFIT (Line 1 minus Line 18) (Enter as Item 2) _____	

Explanation of deductions claimed on Lines 5 and 16 _____

SCHEDULE B—INCOME FROM RENTS AND ROYALTIES (See Instruction 5)

1. KIND OF PROPERTY	2. AMOUNT RECEIVED	3. COST	4. VALUE AS OF MARCH 1, 1913	5. DEPRECIATION (Explain in table at foot of page)	6. REPAIRS	7. OTHER EXPENSES (Explain below)	8. NET PROFIT (Enter as Item 3)
	\$	\$	\$	\$	\$	\$	\$
	\$	\$	\$	\$	\$	\$	\$
	\$	\$	\$	\$	\$	\$	\$
	\$	\$	\$	\$	\$	\$	\$
	\$	\$	\$	\$	\$	\$	\$
	\$	\$	\$	\$	\$	\$	\$
	\$	\$	\$	\$	\$	\$	\$
	\$	\$	\$	\$	\$	\$	\$
	\$	\$	\$	\$	\$	\$	\$

Explanation of deductions claimed in Column 7 _____

SCHEDULE C—PROFIT FROM SALE OF REAL ESTATE, STOCKS, BONDS, ETC. (See Instruction 6)

1. KIND OF PROPERTY	2. DATE ACQUIRED	3. AMOUNT RECEIVED	4. DEPRECIATION ALLOWABLE SINCE ACQUISITION	5. COST	6. VALUE AS OF MARCH 1, 1913	7. SUBSEQUENT IMPROVEMENTS	8. NET PROFIT (Enter as Item 5)
		\$	\$	\$	\$	\$	\$
		\$	\$	\$	\$	\$	\$
		\$	\$	\$	\$	\$	\$
		\$	\$	\$	\$	\$	\$
		\$	\$	\$	\$	\$	\$
		\$	\$	\$	\$	\$	\$
		\$	\$	\$	\$	\$	\$
		\$	\$	\$	\$	\$	\$
		\$	\$	\$	\$	\$	\$

State how property was acquired _____

SCHEDULE D—CAPITAL NET GAIN OR LOSS FROM SALE OF ASSETS HELD MORE THAN TWO YEARS (See Instruction 6a)

1. KIND OF PROPERTY	2. DATE ACQUIRED <i>Mo. Day Year</i>	3. DATE SOLD <i>Mo. Day Year</i>	4. AMOUNT RECEIVED	5. DEPRECIATION ALLOWABLE SINCE ACQUISITION	6. COST	7. VALUE AS OF MARCH 1, 1913	8. SUBSEQUENT IMPROVEMENTS AND CAPITAL DEDUCTIONS	9. NET GAIN OR LOSS (Enter 12 1/2% as Item 6b)
			\$	\$	\$	\$	\$	\$
			\$	\$	\$	\$	\$	\$
			\$	\$	\$	\$	\$	\$
			\$	\$	\$	\$	\$	\$
			\$	\$	\$	\$	\$	\$
			\$	\$	\$	\$	\$	\$
			\$	\$	\$	\$	\$	\$
			\$	\$	\$	\$	\$	\$
			\$	\$	\$	\$	\$	\$

State how property was acquired _____

SCHEDULE E—INTEREST ON LIBERTY BONDS AND OTHER OBLIGATIONS OR SECURITIES (See Instruction 8)

1. OBLIGATIONS OR SECURITIES	2. INTEREST RECEIVED OR ACCRUED	3. AMOUNT OWED	4. PRINCIPAL AMOUNT EXEMPT FROM TAXATION	5. AMOUNT OWED IN EXCESS OF EXEMPTION	6. INTEREST ON AMOUNT IN EXCESS OF EXEMPTION (Enter as Item 8)
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia _____	\$	\$	All _____	XXXXXX	XXXXXX
(b) Securities issued under Federal Farm Loan Act, or under such Act as Amended _____	\$	\$	All _____	XXXXXX	XXXXXX
(c) Liberty 3 1/4% Bonds and other obligations of United States issued on or before September 1, 1917, and obligations of possessions of the United States _____	\$	\$	All _____	XXXXXX	XXXXXX
(d) Liberty 4% and 4 1/4% Bonds, Treasury 8 1/4%, 4%, and 4 1/2% Bonds, Treasury Certificates of Indebtedness, and Treasury (War) Savings Certificates _____	\$	\$	\$5,000	\$	\$
(e) Treasury Notes _____	\$	\$	None	\$	\$
(f) Interest to July 2, 1926, on not exceeding \$50,000 of Liberty 4% and 4 1/4% Bonds owned in excess of \$5,000 of the obligations enumerated on Line (d) _____	\$	\$	Taxable Interest (total of Lines (d) and (e), Column 6, minus Line (f), Column 2) _____		\$

SCHEDULE F—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 1, 12, 14, AND 15

EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES A AND B

1. KIND OF PROPERTY (If buildings, state material of which constructed)	2. DATE ACQUIRED	3. AGE WHEN ACQUIRED	4. PROBABLE LIFE AFTER ACQUISITION	5. COST	6. VALUE AS OF MARCH 1, 1913	AMOUNT OF DEPRECIATION CHARGED OFF	
				\$	\$	7. PREVIOUS YEARS	8. THIS YEAR
				\$	\$	\$	\$
				\$	\$	\$	\$
				\$	\$	\$	\$
				\$	\$	\$	\$
				\$	\$	\$	\$
				\$	\$	\$	\$
				\$	\$	\$	\$
				\$	\$	\$	\$

EXPLANATION OF DEDUCTION FOR LOSSES BY FIRE, STORM, ETC., CLAIMED IN SCHEDULE A, AND IN ITEM 13

1. KIND OF PROPERTY	2. DATE ACQUIRED	3. COST	4. VALUE AS OF MARCH 1, 1913	5. SUBSEQUENT IMPROVEMENTS	6. DEPRECIATION ALLOWABLE SINCE ACQUISITION	7. INSURANCE AND SALVAGE VALUE	8. DEDUCTIBLE LOSS
		\$	\$	\$	\$	\$	\$
		\$	\$	\$	\$	\$	\$
		\$	\$	\$	\$	\$	\$
		\$	\$	\$	\$	\$	\$
		\$	\$	\$	\$	\$	\$
		\$	\$	\$	\$	\$	\$
		\$	\$	\$	\$	\$	\$
		\$	\$	\$	\$	\$	\$
		\$	\$	\$	\$	\$	\$

AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules and statements (if any), has been examined by me, and, to the best of my knowledge and belief is a true and complete return made in good faith for the taxable year as stated, pursuant to the Revenue Act of 1926 and the Regulations issued under authority thereof.

(If return is made by agent, the reason therefor must be stated on this line)

Sworn to and subscribed before me this 11 day of March, 1927.

Sam Houston
(Signature of officer administering oath)

Notary Public
(Title)

NOTARIAL SEAL

3760 Highland Ave
(Signature of individual or agent)
(Address of individual or agent)

[Endorsed]: Filed Dec. 29, 1941.

(Testimony of Dan O'Hanlon.)

Mr. Mitchell: Then the individual income tax return of Mr. Kammerdiner for the year 1926.

The Clerk: 25.

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 25.")

DEPENDANT'S EXHIBIT NO. 25

Form 1040
INTERNAL REVENUE
(Auditor's Stamp)

INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES OF MORE THAN \$5,000

REGARDLESS OF AMOUNT, IF DERIVED FROM A PROFESSION OR BUSINESS, INCLUDING FARMING

For Calendar Year 1926

File This Return With the Collector of Internal Revenue for Your District on or Before March 15, 1927

(PRINT NAME AND ADDRESS PLAINLY BELOW)

Mr. J. Kammerdiner

237 So. Highland Ave

(Street and number, or rural route)

Los Angeles, Los Angeles, California.
(Post office) (County) (State)

Do Not Write in These Spaces

20678
838
13 1927
10/12

OCCUPATION, PROFESSION, OR KIND OF BUSINESS Partner in Rotary Jar Business.

1. Are you a citizen or resident of the United States? **YES**
2. If you filed a return for 1925, to what Collector's office was it sent? **LOS ANGELES**
3. Is this a joint return of husband and wife? **NO**
4. State name of husband or wife if a separate return was made and the Collector's office where it was sent: **Mrs. J. Kammerdiner as above.**
5. Were you married and living with husband or wife on the last day of your taxable year? **YES**
6. If not, were you on the last day of your taxable year supporting one or more persons living in your household who are closely related to you?
7. If your status in respect to questions 5 and 6 changed during the year, state date of such change
8. How many dependent persons (other than husband or wife) under 18 years of age or incapable of self-support because mentally or physically defective were receiving their chief support from you on the last day of your taxable year?

INCOME

1. Salaries, Wages, Commissions, etc. (State name and address of paymaster, etc.)
2. Income from Business or Profession. (From Schedule A)
3. Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except interest upon which a tax was paid at source)
(a) Interest on Tax-free Covenant Bonds Upon Which a Tax was Paid at Source
4. Income from Partnerships, Fiduciaries, etc. (State name and address of partnership, etc.)
5. Rents and Royalties. (From Schedule D)
6. Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule C)
7. Dividends on Stock of Domestic Corporations
8. Taxable Interest on Liberty Bonds, etc. (From Schedule E)
9. Other Income (including dividends received on stock of foreign corporations). (State nature of income)
10. Total Income in Items 1 to 9

DEDUCTIONS

11. Interest Paid
12. Taxes Paid. (Explain in Schedule F)
13. Losses by Fire, Storm, etc. (Explain in Table on page 2)
14. Paid Debts. (Explain in Schedule F)
15. Contributions. (Explain in Schedule F)
16. Other Deductions Authorized by Law. (Explain below or on separate sheet)
17. Total Deductions in Items 11 to 15
18. Net Income (Item 10 minus Item 17)

COMPUTATION OF TAX (See Instruction 31)

19. Total Net Income (Item 18) **6,681.01**
20. Less: Personal Exemptions and Credit for Dependents (See Instruction 20) **2,950.00**
21. Taxable Income (Item 19) **3,731.01**
22. Amount tax on Item 21 **3,731.01**
23. Amount tax on Item 21 **3,731.01**
24. Personal Exemptions **1,750.00**
25. Credit for Dependents **1,800.00**
26. Total of Items 23, 31, and 35 **3,318.75**
27. Balance (Item 31 minus 36) **33,962.02**
28. Amount taxable at 1 1/2% (not over the first \$4,000 of Item 37) **4,000.00**
29. Balance (Item 37 minus 38) **29,962.02**
30. Amount taxable at 3% (not over the second \$4,000 of Item 37) **4,000.00**
31. Amount taxable at 5% (balance over \$8,000 of Item 37) **25,962.02**
32. Normal Tax (1 1/2% of Item 38) **60.00**
33. Normal Tax (3% of Item 40) **120.00**
34. Normal Tax (5% of Item 41) **1,200.00**
35. Surplus on Item 18 (see Instruction 21) **1,472.02**
36. Tax on Net Income (total of Items 32, 33, 34, and 35) **2,950.00**
37. Less Credit of 25% of Tax on Earned Net Income (Item 30) **13.98**
38. Balance (Item 46 minus 47) **2,936.02**
39. Adjustment for Capital Gain or Loss (12 1/2% of Column 9, Schedule D) **838.98**
40. Total Tax (total of difference between Items 38 and 40) **2,097.04**
41. Low Income Tax Paid at Source
42. Income and Profit Taxes paid to a foreign country or U. S. possession (Items 51 and 52) **2,936.02**
43. Balance of Tax (Item 40 minus 42) **2,936.02**

An amended return must be marked "Amended" at top of return

Checks and drafts will be accepted only if payable at par

2912.33

B-1

SCHEDULE A—INCOME FROM BUSINESS OR PROFESSION (See Instruction 5)

1. Total receipts from business or profession (state kind of business)

Cost or Goods Sold

2. Labor
3. Material and supplies
4. Merchandise bought for sale
5. Other costs (Items below or on separate sheet)
6. Plus inventory at beginning of year
7. TOTAL (Lines 2 to 6, inclusive)
8. Less inventory at end of year
9. NET COST OR GOODS SOLD (Line 7 minus Line 8)

OTHER BUSINESS DEDUCTIONS

10. Salaries, exclusive of "Labor" reported on Line 2, and exclusive of compensation for your services
11. Interest on business indebtedness to others
12. Taxes on business and business property
13. Losses by fire, storm, etc. (explain in table provided therefor at foot of page)
14. Bad debts arising from sales
15. Depreciation, obsolescence, and depletion (explain in table provided therefor at foot of page)
16. Rent, repairs, and other expenses (Items below or on separate sheet)
17. TOTAL (Lines 10 to 16, inclusive)
18. TOTAL DEDUCTIONS (Line 9 plus Line 17)
19. NET PROFIT (Line 1 minus Line 18) (Enter as Item 5)

Explanation of deductions claimed on Lines 8 and 10.

SCHEDULE B—INCOME FROM RENTS AND ROYALTIES (See Instruction 5)

1. KIND OF PROPERTY	2. AMOUNT RECEIVED	3. COST	4. VALUE AS OF MARCH 1, 1918	5. DEPRECIATION ALLOWABLE SINCE ACQUISITION (See foot of page)	6. REPAIRS	7. OTHER EXPENSES (Itemize below)	8. NET PROFIT (Enter as Item 6)

Explanation of deductions claimed in Column 7

SCHEDULE C—PROFIT FROM SALE OF REAL ESTATE, STOCKS, BONDS, ETC. (See Instruction 6)

1. KIND OF PROPERTY	2. DATE ACQUIRED	3. AMOUNT RECEIVED	4. DEPRECIATION ALLOWABLE SINCE ACQUISITION	5. COST	6. VALUE AS OF MARCH 1, 1918	7. SUBSEQUENT IMPROVEMENTS	8. NET PROFIT (Enter as Item 6)

State how property was acquired

SCHEDULE D—CAPITAL NET GAIN OR LOSS FROM SALE OF ASSETS HELD MORE THAN TWO YEARS (See Instruction 6a)

1. KIND OF PROPERTY	2. DATE ACQUIRED	3. DATE SOLD	4. AMOUNT RECEIVED	5. DEPRECIATION ALLOWABLE SINCE ACQUISITION	6. COST	7. VALUE AS OF MARCH 1, 1918	8. SUBSEQUENT IMPROVEMENTS AND CAPITAL DEDUCTIONS	9. NET GAIN OR LOSS (Enter 175% of Item 8)

State how property was acquired

SCHEDULE E—INTEREST ON LIBERTY BONDS AND OTHER OBLIGATIONS OR SECURITIES (See Instruction 8)

1. OBLIGATIONS OR SECURITIES	2. INTEREST RECEIVED OR ACCRUED	3. AMOUNT OWED	4. PRINCIPAL AMOUNT RECEIVED FROM TAXATION	5. AMOUNT OWED IN EXCESS OF EXEMPTIONS	6. INTEREST ON AMOUNT IN EXCESS OF EXEMPTIONS (Enter as Item 6)
(a) Obligations of a State, Territory, or political subdivision thereof, or of the District of Columbia			All	XXXXXX	XXXXXX
(b) Securities issued under Federal Farm Loan Act, or under such Act as Amended			All	XXXXXX	XXXXXX
(c) Liberty 3½% Bonds and other obligations of United States issued on or before September 1, 1917, and obligations of possessions of the United States			All	XXXXXX	XXXXXX
(d) Liberty 4% and 4½% Bonds, Treasury 3½%, 4%, and 4½% Bonds, Treasury Certificate of Indebtedness, and Treasury (War) Savings Certificates			\$5,000	0	0
(e) Treasury Notes			None		
(f) Interest to July 2, 1926, on not exceeding \$50,000 of Liberty 4% and 4½% Bonds owned in excess of \$5,000 of the obligations enumerated on Line (d)			Taxable Interest (total of Lines (d) and (e), Column 6, minus Line (f), Column 2)		

SCHEDULE F—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 1, 12, 14, AND 15

EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES A AND B

1. KIND OF PROPERTY (If buildings, state material of which constructed)	2. DATE ACQUIRED	3. AND WHEN ACQUIRED	4. PROBABLE LIFE AFTER ACQUISITION	5. COST	6. VALUE AS OF MARCH 1, 1918	7. PREVIOUS YEARS	8. THIS YEAR

EXPLANATION OF DEDUCTION FOR LOSSES BY FIRE, STORM, ETC., CLAIMED IN SCHEDULE A, AND IN ITEM 13

1. KIND OF PROPERTY	2. DATE ACQUIRED	3. COST	4. VALUE AS OF MARCH 1, 1918	5. SUBSEQUENT IMPROVEMENTS	6. DEPRECIATION ALLOWABLE SINCE ACQUISITION	7. INSURANCE AND BALANCE VALUE	8. DEDUCTIBLE LOSS

AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules and statements (if any), has been examined by me, and to the best of my knowledge and belief is a true and complete return made in good faith for the taxable year as stated, pursuant to the Revenue Act of 1926 and the Regulations issued under authority thereof.

(If return is made by agent, this reason therefor must be stated on this line)

Sworn to and subscribed before me this 11th day of May, 1927.

Notary Public

NOTARIAL SEAL

J. K. Kummerdiner

(Address of individual or agent)

B-2

(Testimony of Dan O'Hanlon.)

STATEMENT SHOWING INCOME AND EXPENSES
OF ORANGE GROVE, OWNED JOINTLY BY W.
R. RITCHIE ESTATE, WM. KAMMRER, J. KAM-
MERDINER AND T. McCART.

Received from Packing House, after deducting packing house charges, picking, hauling, etc.....	17,247.34	
From oil	173.30	
		<hr/>
		17,420.65
E. E. Ross, for cultivating.....	900.00	
Fumigating	498.50	
Water	486.00	
Taxes	434.36	
Fertilizer	522.43	
Repairs to pipeline, etc.....	123.68	
Pruning and extra labor.....	212.35	
Depreciation	212.00	3,389.32
	<hr/>	<hr/>
		14,031.33

Depreciation 3% on 6750.00 (11 ac oranges)
\$14,031.33 divided equally between four, each receiving
\$3,507.83.

[Endorsed]: Filed Dec. 29, 1941.

Mr. Mitchell: The individual return of Mr.
Kammerdiner for the year 1928.

The Clerk: 26.

(The document referred to was received in
evidence and marked "Defendant's Exhibit
No. 26.")

INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES FROM SALARIES OR WAGES OF MORE THAN \$5,000 OR INCOMES, REGARDLESS OF AMOUNT, FROM BUSINESS, PROFESSION, RENTS, OR SALE OF PROPERTY

For Calendar Year 1928

File This Return With the Collector of Internal Revenue for Your District on or Before March 15, 1929

Print Name and Address Plainly Below
Declassified. **Robert J. Lammertiner**
310504
316 E. 1st St. Los Angeles, California.
(Street and number, or rural route)
Los Angeles, Los Angeles, California.
(Post office) (County) (State)

Occupation, Profession, or Business. **Partner in Lammertiner & Co. Inc.**

Form 1040
INTERNAL REVENUE
FEDERAL TAX
APR 27 1931
APR 5 1931

Do Not Write in These Spaces
File No. **206**
Social Security Number
RECEIVED WITH PERMIT
3/15/29
354-70

- 1. Are you a citizen or resident of the United States? **Yes.**
- 2. If you filed a return for 1927, to what Collector's office was it sent? **Los Angeles**
- 3. Is this a joint return of husband and wife? **No.**
- 4. State name of husband or wife if a separate return was made and the Collector's office where it was sent. **Los Angeles**
- 5. Were you married and living with husband or wife on the last day of your taxable year? **Yes.**
- 6. If not, were you on the last day of your taxable year supporting one or more persons living in your household who are closely related to you? **Yes.**
- 7. If your status in respect to questions 5 and 6 changed during the year, state date and nature of change. **None**
- 8. How many dependent persons (other than husband or wife) under 18 years of age or incapable of self-support because mentally or physically defective were receiving their chief support from you on the last day of your taxable year? **2**

INCOME		Amount received	Expenses paid (Claimed as income?)
1. Salaries, Wages, Commissions, etc. (State name and address of person from whom received)			
2. Income from Business or Profession. (From Schedule A)			
3. Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except interest upon which a tax was paid at source)			
(a) Interest on Tax-free Covenant Bonds Upon Which a Tax was Paid at Source			
4. Income from Partnerships. (State name and address)			
(a) Income from Fiduciaries. (State name and address)			
5. Rents and Royalties. (From Schedule D)			
6. Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule C)			
7. Dividends on Stock of Domestic Corporations			
8. Taxable Interest on Liberty Bonds. (From Schedule E)			
9. Other Income (including dividends received on stock of foreign corporations). (State nature of income)			
(a)			
(b)			

10. TOTAL INCOME IN ITEMS 1 TO 9	\$ 85,008.00
DEDUCTIONS	
11. Interest Paid	
12. Taxes Paid. (Explain in Schedule F)	
13. Losses by Fire, Storm, etc. (Explain in Table on page 2)	
14. Bad Debts. (Explain in Schedule F)	
15. Contributions. (Explain in Schedule F)	
16. Other Deductions Authorized by Law. (Explain in Schedule F)	
17. TOTAL DEDUCTIONS IN ITEMS 11 TO 16	
18. NET INCOME (Item 10 minus Item 17)	\$ 85,008.00

EARNED INCOME CREDIT		COMPUTATION OF TAX (See instruction 23)	
19. Earned Net Income (not over \$20,000)	\$ 20,000.00	42. Normal Tax (1 1/2% of Item 36)	\$ 60.00
20. Amount taxable at 1 1/2% (not over the first \$4,000 of Item 21)	\$ 4,000.00	43. Normal Tax (3% of Item 40)	120.00
21. Amount taxable at 5% (balance over \$4,000 of Item 21)	\$ 16,008.00	44. Normal Tax (5% of Item 41)	372.24
22. Amount taxable at 15% (not over the second \$4,000 of Item 21)	\$ 4,000.00	45. Surtax on Item 19 (See instruction 21)	873.13
23. Amount taxable at 25% (balance over \$4,000 of Item 21)	\$ 12,008.00	46. Tax on Net Income (total of Items 42, 43, 44, and 45)	3278.84
24. Normal Tax (1 1/2% of Item 22)	\$ 30.00	47. Adjustment for Capital Gain or Loss (12 1/2% of Column 9, Schedule D)	
25. Normal Tax (3% of Item 23)	\$ 120.00	48. Total of Difference between Items 46 and 47	2210.84
26. Normal Tax (5% of Item 24)	\$ 300.40	49. Less Credit of 25% of Tax on Earned Net Income (Item 30)	13.14
27. Surplus on Item 19 (See instruction 21)	\$ 4.00	50. Total Tax (Item 48 minus Item 49)	2254.70
28. Tax on Earned Net Income (total of Items 24, 25, 26, and 27)	\$ 450.40	51. Less Income Tax Paid at Source	
29. Credit of 25% of Item 29 (not over 25% of Items 28, 29, 30, and 44)	\$ 112.60	52. Income and Profit Taxes paid to a foreign country or U. S. possession	
		53. Balance of Tax (Item 50 minus Items 51 and 52)	2142.10

I swear (affirm) that this return, including the accompanying schedules and statements (if any), has been examined by me, and to the best of my knowledge and belief, is a true and complete return made in good faith for the taxable year as stated, pursuant to the Revenue Act of 1925, and the Regulations issued under authority thereof.

Sworn to and subscribed before me this **27th** day of **March**, 1929.
Notarial Seal
Signature of taxpayer
Signature of preparer
Signature of agent
Checks and drafts will be accepted only if payable at par

SCHEDULE A—INCOME FROM BUSINESS OR PROFESSION (See Instruction 2)

1. Take receipts from business or profession (state kind of business)

Cost or Goods Sold

- 2. Labor
- 3. Material and supplies
- 4. Merchandise bought for sale
- 5. Other costs (itemize below or on separate sheet)
- 6. Plus inventory at beginning of year
- 7. TOTAL (Lines 2 to 6, inclusive)
- 8. Less inventory at end of year
- 9. Net Cost or Goods Sold (Line 7 minus Line 8)

Note.—Enter "C" or "CM" on Lines 6 and 8 to indicate whether inventories are valued at cost, or cost or market, whichever is lower.

Explanation of deductions claimed on Lines 5 and 16

OTHER BUSINESS DEDUCTIONS

- 10. Salaries, exclusive of "Labor," reported on Line 2 (Do not deduct compensation for your own services)
- 11. Interest on business indebtedness to others
- 12. Taxes on business and business property
- 13. Losses (explain in table provided therefor at foot of page)
- 14. Bad debts arising from sales or services
- 15. Depreciation, obsolescence, and depletion (explain in table provided therefor at foot of page)
- 16. Rent, repairs, and other expenses (itemize below or on separate sheet)
- 17. TOTAL (Lines 10 to 16, inclusive)
- 18. TOTAL DEDUCTIONS (Line 9 plus Line 17)
- 19. NET PROFIT (Line 1 minus Line 18) (Enter as Item 2)

SCHEDULE B—INCOME FROM RENTS AND ROYALTIES (See Instruction 5)

1. KIND OF PROPERTY

2. AMOUNT RECEIVED

3. COST

4. VALUE AS OF MARCH 1, 1913

5. DEPRECIATION (Explain in table at foot of page)

6. REPAIRS

7. OTHER EXPENSES (Explain in table)

8. NET PROFIT (Enter as Item 2)

Explanation of deductions claimed in Column 7

SCHEDULE C—PROFIT FROM SALE OF REAL ESTATE, STOCKS, BONDS, ETC. (See Instruction 6)

1. KIND OF PROPERTY

2. DATE ACQUIRED

3. AMOUNT RECEIVED

4. DEPRECIATION ALLOWABLE FOR ACQUISITION

5. COST

6. VALUE AS OF MARCH 1, 1913

7. OTHER EXPENSES (Explain in table)

8. NET PROFIT (Enter as Item 2)

State how property was acquired

SCHEDULE D—CAPITAL NET GAIN OR LOSS FROM SALE OF ASSETS HELD MORE THAN TWO YEARS (See Instruction 6a)

1. KIND OF PROPERTY

2. DATE ACQUIRED

3. AMOUNT RECEIVED

4. DEPRECIATION ALLOWABLE FOR ACQUISITION

5. COST

6. VALUE AS OF MARCH 1, 1913

7. OTHER EXPENSES (Explain in table)

8. NET PROFIT (Enter as Item 2)

State how property was acquired

SCHEDULE E—INTEREST ON LIBERTY BONDS AND OTHER OBLIGATIONS OR SECURITIES (See Instruction 7)

1. OBLIGATIONS OR SECURITIES

2. INTEREST RECEIVED OR ACCRUED

3. AMOUNT OWED

4. PAYMENT ON ACCOUNT OF PRINCIPAL

5. AMOUNT OF INTEREST

6. AMOUNT OF PRINCIPAL

- (a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia
- (b) Securities issued under Federal Farm Loan Act, or under such Act as Amended
- (c) Liberty 3½% Bonds and other obligations of United States issued on or before September 1, 1917, and obligations of possessions of the United States
- (d) Liberty 4% and 4½% Bonds, Treasury 3½%, 3¾%, 4%, and 4½% Bonds, Treasury Certificates of Indebtedness, and Treasury Savings Certificates
- (e) Treasury Notes

			All	XXXX	XXXX
			All	XXXX	XXXX
			All	XXXX	XXXX
		\$5,000			
			None		

SCHEDULE F—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 1, 12, 14, 15, AND 16

EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES A AND B

1. KIND OF PROPERTY (If buildings, state material of which constructed)

2. DATE ACQUIRED

3. AGE WHEN ACQUIRED

4. DEPRECIATION LEFT AFTER ACQUISITION

5. COST

6. VALUE AS OF MARCH 1, 1913

7. OTHER EXPENSES (Explain in table)

EXPLANATION OF DEDUCTION FOR LOSSES BY FIRE, STORM, ETC., CLAIMED IN SCHEDULE A, AND IN ITEM 13

1. KIND OF PROPERTY

2. DATE ACQUIRED

3. COST

4. VALUE AS OF MARCH 1, 1913

5. DEPRECIATION

6. REPAIRS

7. OTHER EXPENSES (Explain in table)

(Testimony of Dan O'Hanlon.)

Mr. Mitchell: Then the individual income tax return of Mrs. Kammerdiner for the year 1928.

The Clerk: 27.

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 27.")

(Testimony of Dan O'Hanlon.)

Mr. Mitchell: Then the individual income tax return of Mr. Kammerdiner for the year 1929.

The Clerk: 28.

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 28.")

FOR NET INCOMES FROM SALARIES OR WAGES OF MORE THAN \$5,000
AND INCOMES FROM BUSINESS, PROFESSION, RENTS, OR SALE OF PROPERTY

Do Not Write in These Spaces

File
Case 1496

Serial
Number ..
(Cashier's Stamp)

File This Return With the Collector of Internal Revenue for Your District on or Before March 15, 1930

PRINT NAME AND ADDRESS PLAINLY BELOW

S. J. H. S.

237 101st Ave

San Diego, California

Occupation 1st Lt. Joint C. 1941-1946 1st Lt. 1946-1951

Cash Gloucester M. O. Dept. of Ind.

Carded 7

1. Are you a citizen or resident of the United States? Yes
2. If you filed a return for 1928, to what Collector's office was it sent? Los Angeles.
3. Is this a joint return of husband and wife? No.
4. State the names of husband and wife, and where the separate return was made and the Collector's office where it was sent. W. B. Jones and Mary Jones, Los Angeles.
5. Were you married and living with husband or wife on the last day of your taxable year? Yes
6. If not, were you on the last day of your taxable year supporting in your household one or more persons closely related to you?
7. If your status in respect to questions 5 and 6 changed during the year, state date and nature of change.
8. How many dependent persons (other than husband or wife) under 18 years of age or incapable of self-support were receiving their chief support from you on the last day of your taxable year? Seven

INCOME		Amount received	Expenses paid (Explain in Schedule F)	Wife
1. Salaries, Wage, Commissions, etc.	(State name and address of employer)			
2. Dividends, interest, etc.				
3. Pensions, annuities, etc.				
4. Gifts, etc.				
5. Other income				
				NOT INVESTIGATED

NOT INVESTIGATED

FIELD

RECEIVED
AUG 20 1971
U.S. AIR FORCE DIVISION

- | | | |
|-----|--|-----------|
| 2. | Income from Business or Profession. (From Schedule A) | |
| 3. | Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except interest on tax-free covenant bonds) | |
| 4. | Interest on Tax-free Covenant Bonds Upon Which a Tax was Paid at Source | |
| 5. | Income from Partnerships. (State name and address) | |
| 6. | Income from Fiduciaries. (State name and address) | 7786.00 |
| 7. | Rents and Royalties. (From Schedule B) | |
| 8. | Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule C) | |
| 9. | Dividends on Stock of Domestic Corporations. <i>also stock sold return</i> | 804.13 |
| 10. | Taxable Interest on Liberty Bonds, etc. (From Schedule E) | |
| 11. | Other Income (including dividends on stock of foreign corporations). (State nature of income) | |
| (a) | | |
| (b) | | |
| 12. | TOTAL INCOME IN ITEMS 1 TO 11 | 98,357.70 |

DEDUCTIONS

- | | | | | | | | |
|-----|--|--|----|--------|-----|--|--|
| 13. | Interest Paid..... | | \$ | | | | |
| 14. | Taxes Paid. (Explain in Schedule F) | | | | | | |
| 15. | Losses by Fire, Storm, etc. (Explain in Table at foot of page 3) | | | | | | |
| 16. | Bad Debts. (Explain in Schedule F) | | | | | | |
| 17. | Contributions. (Explain in Schedule F) | | | | | | |
| 18. | Other Deductions Authorized by Law. (Explain in Schedule F) | | | | | | |
| 19. | TOTAL DEDUCTIONS IN ITEMS 13 TO 18 | | \$ | | | | |
| 20. | NET INCOME (Item 12 minus Item 19) | | \$ | 98,357 | 170 | | |

EARNED INCOME CREDIT**COMPUTATION OF TAX (See instructions 85)**

- | | | |
|--|---|--|
| 21. Earned Income (not over \$30,000). \$3,357.70 | 33. Net Income (Item 20 above). \$3,357.70 | 44. Normal Tax (1 1/2% of Item 40) \$20.00 |
| 22. Less: Personal Exemption and Credit for Dependents 255.00 | 34. Less: Dividends (Item 9) 604.12 | 45. Normal Tax (3% of Item 47) 80.00 |
| 23. Balance (Item 21 minus 22) \$3,102.70 | 35. Interest on Liberty Bonds, etc. (Item 10) 600.00 | 46. Normal Tax (3% of Item 48) 3480.11 |
| 24. Amount taxable at 1 1/2% (not over \$4,000) \$400.00 | 36. Credit for Dependents 1700.00 | 47. Surtax on Item 30 (see Instruction 23) 3487.23 |
| 25. Amount taxable at 3% (not over \$4,000) 400.00 | 37. Personal Exemption 3354.12 | 48. Tax on Net Income (total of Items 44, 45, 46, and 47) 11347.85 |
| 26. Amount taxable at 5% (balance over \$8,000 of Item 23) 812.70 | 38. Total of Items 34 to 37. \$3,354.12 | 49. Tax on Capital Gain or Loss (12 1/2% of Col. 8, Subd. D) 4928.10 |
| 27. Normal Tax (1 1/2% of Item 24) \$20.00 | 39. Balance (Item 33 minus 38) \$5,003.56 | 50. Total of or difference between Items 48 and 49 1428.10 |
| 28. Normal Tax (3% of Item 25) 80.00 | 40. Amount taxable at 1 1/2% (not over \$4,000) 4,000.00 | 51. Less: Credit of 25% of Tax on Earned Income (Item 22) 167.93 |
| 29. Normal Tax (5% of Item 26) 364.86 | 41. Balance (Item 39 minus 40) \$1,003.56 | 52. Total Tax (Item 50 minus Item 51) 14750.17 |
| 30. Surtax on Item 21 206.86 | 42. Amount taxable at 3% (not over \$4,000) 4,000.00 | 53. Less: Income Tax Paid at Source (Item 52) 14750.17 |
| 31. Tax on Earned Net Income (total of Items 27 to 30) \$671.72 | 43. Amount taxable at 8% (Item 41 minus Item 42) \$7,003.56 | 54. Income Tax paid to a foreign country or U. S. possession 0.00 |
| 32. Credit of 25% of Tax (not over 25% of Items 30, 44, 45, and 46) \$167.93 | | 55. Balance of Tax (Item 52 minus Items 53 and 54) 14750.17 |

AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules and statements, has been examined by me, and to the best of my knowledge and belief, is a true and complete return made in good faith for the taxable year stated, pursuant to the Revenue Act of 1928 and the Regulations issued thereunder.

(If return is made by airtel, the reason therefor must be stated on this line)

Sworn to and subscribed before me this 5th day of March, 1930.

NOTARIAL
SEAL

Dear Mother

Notary Public.

An amended return must be marked "Amended" at top of return

[Endorsed]: Filed Dec. 28, 1941

8.

346

WITH 1929
DEFENDANT'S
RETURN SERVICE

(Auditor's Stamp)

INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES FROM SALARIES OR WAGES OF MORE THAN \$5,000
AND INCOMES FROM BUSINESS, PROFESSION, RENTS, OR SALE OF PROPERTY

For Calendar Year 1929

File This Return With the Collector of Internal Revenue for Your District on or Before March 15, 1930

PRINT NAME AND ADDRESS PLAINLY BELOW

Mrs. Jas. Kassaridiner

237 S. Highland Ave

Los Angeles, Los Angeles, Calif.

Occupation Partner or Joint Owner in Pottery Jar Business

Do Not Write in These Spaces

File No. 1496
301467

Serial Number (Contributor's Designation)

12

Cash, Credit, U.O. Cert. of Ind. First Payment

3664.26

Carded

- Are you a citizen or resident of the United States? **Yes**
- If you filed a return for 1928, what Collector's office were you next? **Los Angeles**
- Is this a joint return of husband and wife? **No**
- State name of husband or wife if a separate return was made and the Collector's office where it was sent. **J. Kassaridiner, to Los Angeles.**
- Were you married and living with husband or wife on the last day of your taxable year? **Yes**
- If not, were you on the last day of your taxable year supporting in your household one or more persons closely related to you?
- If your status in respect to questions 5 and 6 changed during the year, state date and nature of change.
- How many dependent persons (other than husband or wife) under 18 years of age or incapable of self-support were receiving their chief support from you on the last day of your taxable year? **2**

INCOME

- Salaries, Wages, Commissions, etc. (State name and address of employer)
From Joint A/c of Partnership as before **1927.50**
- Income from Business or Profession. (From Schedule A)
- Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except interest on tax-free covenant bonds)
- Interest on Tax-free Covenant Bonds Upon Which a Tax was Paid at Source
- Income from Partnerships. (State name and address) **From J. Kassaridiner, to Los Angeles** **7785.08**
- Income from Fiduciaries. (State name and address)
- Rents and Royalties. (From Schedule B)
- Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule C)
- Dividends on Stock of Domestic Corporations. **From above joint return** **90.12**
- Taxable Interest on Liberty Bonds, etc. (From Schedule D)
- Other Income (including dividends on stock of foreign corporations). (State nature of income)
- (a)
- (b)
- TOTAL INCOME IN ITEMS 1 TO 11 **9835.70**

FIELD

DEDUCTIONS

- Interest Paid
- Taxes Paid. (Explain in Schedule F)
- Losses by Fire, Storm, etc. (Explain in Table at foot of page 1)
- Bad Debts. (Explain in Schedule F)
- Contributions. (Explain in Schedule F) **Christian Science Movement** **500.00**
- Other Deductions Authorized by Law. (Explain in Schedule F)
- TOTAL DEDUCTIONS IN ITEMS 13 TO 18 **500.00**
- NET INCOME (Item 12 minus Item 18) **9335.70**

EARNED INCOME CREDIT

COMPUTATION OF TAX (See Instruction 32)

21. Earned Income (not over \$30,000)	9335.70	23. Net Income (Item 20 above)	9785.70	44. Normal Tax (1 1/2% of Item 40)	20.00
22. Less Personal Exemption and Credit for Dependents	2150.00	24. Less: Dividends (Item 9)	804.12	45. Normal Tax (3% of Item 42)	80.40
23. Balance (Item 21 minus 22)	7185.70	35. Interest on Liberty Bonds, etc. (Item 10)		46. Normal Tax (5% of Item 43)	3475.18
24. Amount taxable at 1 1/2% (not over \$4,000)	4000.00	36. Credit for Dependents	400.00	47. Surplus on Item 20 (see Instruction 23)	1195.85
25. Amount taxable at 3% (not over \$4,000)	4000.00	37. Personal Exemption	1750.00	48. Tax on Net Income (total of Items 44 to 47)	14229.97
26. Amount taxable at 5% (balance over \$4,000 of Item 23)	9335.70	38. Total of Items 34 to 37	2954.12	49. Tax on Capital Gain or Loss (12 1/2% of Col. 8, Sched. D)	
27. Normal Tax (1 1/2% of Item 24)	20.00	39. Balance (Item 33 minus 38)	9490.58	50. Total of or difference between Items 48 and 49	14229.97
28. Normal Tax (3% of Item 25)	80.40	40. Amount taxable at 1 1/2% (not over \$4,000)	4000.00	51. Less Credit of 25% of Tax on Earned Income (Item 32)	171.82
29. Normal Tax (5% of Item 26)	3664.26	41. Balance (Item 39 minus 40)	9090.58	52. Total Tax (Item 50 minus 51)	14058.05
30. Surplus on Item 21	206.86	42. Amount taxable at 3% (not over \$4,000)	4000.00	53. Less Income Tax Paid at Source	
31. Tax on Earned Net Income (total of Items 27 to 30)	687.70	43. Amount taxable at 5% (Item 41 minus Item 42)	8690.58	54. Income Tax paid to a foreign country or U. S. possession	
32. Credit of 25% of Tax (not over 25% of Items 20, 44, 45, and 46)	171.82			55. Balance of Tax (Item 52 minus Items 53 and 54)	14058.05

AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules and statements, has been examined by me, and to the best of my knowledge and belief, is a true and complete return made in good faith for the taxable year stated, pursuant to the Revenue Act of 1929 and the Regulations issued thereunder.

(If return is made by agent, the return preparer must be stated on this line)

Sworn to and subscribed before me this 5th day of March, 1930.

NOTARIAL SEAL

Sanoflan

Notary Public.

Max

(Signature of individual or agent)

(Signature of officer administering oath)

(Address of agent)

An amended return must be marked "Amended" at top of return Checks and drafts will be accepted only if payable at par

[Endorsed]: Filed Dec. 29, 1941.

8-51108

321

(Testimony of Dan O'Hanlon.)

Mr. Mitchell: Then the individual income tax return of Mrs. Kammerdiner for the year 1930.

The Clerk: 30.

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 30.")

Form 1040
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

(Auditor's Stamp)

INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES FROM SALARIES OR WAGES OF MORE THAN \$5,000
AND INCOMES FROM BUSINESS, PROFESSION, RENTS, OR SALE OF PROPERTY

For Calendar Year 1930

File This Return With the Collector of Internal Revenue for Your District on or Before March 15, 1931

PRINT NAME AND ADDRESS PLAINLY BELOW

MYRTLE B. KAMMERDINER

237 So. Highland Ave.,

(Street and number, or rural route)

LOS ANGELES

(Post office)

L.A.

(County)

California

(State)

Occupation

Do Not Write in These Spaces

File
Code

Serial
Number

District

RECEIVED WITH REMITTANCE

MAR 16 1931

COLLECTOR OF INT. REV.

6th DISTRICT OF CAL.

Cash Check M. O. Crd. of Ind.

First Payment

- Are you a citizen or resident of the United States? **Yes**
- If you filed a return for 1929, to what Collector's office was it sent? **6th Dist. Calif.**
- Is this a joint return of husband and wife? **No**
- State name of husband or wife if a separate return was made and the Collector's office where it was sent **Jas. A. Kammerdiner 6th Dist. Calif.**
- Were you married and living with husband or wife on the last day of your taxable year? **Yes**
- If not, were you on the last day of your taxable year supporting in your household one or more persons closely related to you? **No**
- If your status in respect to questions 5 and 6 changed during the year, state date and nature of change **No change**
- How many dependent persons (other than husband or wife) under 18 years of age or incapable of self-support were receiving their chief support from you on the last day of your taxable year? **Three**

Item and Inclusion No.	INCOME	Amount received (Explain in Schedule F)	Expenses paid (Explain in Schedule F)
1. Salaries, Wages, Commissions, etc. (State name and address of employer)		\$	\$
2. Income from Business or Profession. (From Schedule A)			
3. Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except interest on tax-free covenant bonds)			
4. Interest on Tax-free Covenant Bonds Upon Which a Tax was Paid at Source			
5. Income from Partnerships. (State name and address)			
6. Income from Fiduciaries. (State name and address)			
7. Rents and Royalties. (From Schedule B)			
8. Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule C)			
9. Taxable Interest on Liberty Bonds, etc. (From Schedule E)			
10. Dividends on Stock of Domestic Corporations			
11. Other Income (including dividends on stock of foreign corporations). (State nature of income)			
(a)			
(b)			

12. TOTAL INCOME IN ITEMS 1 TO 11	\$
13. Interest Paid	\$
14. Taxes Paid. (Explain in Schedule F)	\$
15. Losses by Fire, Storm, etc. (Explain in Table at foot of page 2)	\$
16. Bad Debts. (Explain in Schedule F)	\$
17. Contributions. (Explain in Schedule F)	\$
18. Other Deductions Authorized by Law. (Explain in Schedule F)	\$
19. TOTAL DEDUCTIONS IN ITEMS 13 TO 18	\$
20. NET INCOME (Item 12 minus Item 19)	\$ 33 890 79

EARNED INCOME CREDIT

See Schedule Attached

COMPUTATION OF TAX (See Instruction 22)

21. Earned Income (not over \$30,000)	\$ 8781 94	33. Net Income (Item 20 above)	\$ 33690 79	44. Normal Tax (1 1/2% of Item 40)	\$ 60 00
22. Less Personal Exemption and Credit for Dependents	2350 00	34. Liberty Bond Interest (Item 9)		45. Normal Tax (3% of Item 42)	120 00
23. Balance (Item 21 minus 22)	\$ 6431 94	35. Dividends (Item 10)	1985 29	46. Normal Tax (5% of Item 43)	1077 76
24. Amount taxable at 1 1/2% (not over \$4,000)	\$ 4000 00	36. Credit for Dependents		47. Surtax on Item 20 (see Instruction 23)	1210 17
25. Amount taxable at 3% (balance over \$4,000)	2431 94	37. Personal Exemption	2350 00	48. Tax on Net Income (total of Items 44 to 47)	\$ 2467 95
26. Amount taxable at 5% (balance over \$8,000 of Item 23)		38. Total of Items 34 to 37	4335 29	49. Tax on Capital Gain or Loss (12 1/2% of Col. 5, Sched. D)	
27. Normal Tax (1 1/2% of Item 24)	\$ 60 00	39. Balance (Item 38 minus 38)	29555 50	50. Total of or difference between Items 48 and 49	\$ 2467 95
28. Normal Tax (3% of Item 25)	72 96	40. Amount taxable at 1 1/2% (not over \$4,000)	4000 00	51. Less Credit of 35% of Tax on Earned Income (Item 33)	33 24
29. Normal Tax (5% of Item 26)		41. Balance (Item 39 minus 40)	\$ 25555 50	52. Total Tax (Item 50 minus 51)	\$ 2434 71
30. Surtax on Item 21		42. Amount taxable at 3% (not over \$4,000)	4000 00	53. Less Income Tax Paid at Source	
31. Tax on Earned Net Income (total of Items 27 to 30)	\$ 132 96	43. Amount taxable at 5% (Item 41 minus 42)	\$ 21555 50	54. Income Tax paid to a foreign country or U.S. possession	
32. Credit of 25% of Tax (net over 25% of Items 30, 44, 45, and 46)	\$ 33 24			55. Balance of Tax (Item 52 minus Items 53 and 54)	2434 71

AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules and statements, has been examined by me, and to the best of my knowledge and belief, is a true and complete return made in good faith for the taxable year stated, pursuant to the Revenue Act of 1928 and the Regulations issued thereunder.

(If return is made by agent, the return thereon must be signed on this line)

Sworn to and subscribed before me this 13 day of May, 1931.

NOTARIAL
SEAL

(Signature of officer administering oath)

(Title)

Unaudited return must be marked "Unaudited" on top of return.

Checks and drafts will be accepted only if payable at par

Wm. A. KAMMERDINER - MYRTLE B. KAMMERDINER
LOS ANGELES, California

Year 1930.

ROTARY JAR OPERATIONS

<u>INCOME:</u>			
	Local rentals		\$91,640.85
	Texas rentals		1,725.00
	Oklahoma rentals		675.00
	Wyoming rentals		2,137.50
	San Joaquin & Lon. Beach rentals		18,940.00
	Foreign sales		25,824.60
			\$135,942.95
<u>DEDUCTIONS:</u>			
	Cost of manufacturing and repairing Jars		24,566.24
	General expense, advertising, legal exp., trucking etc.		6,021.14
	Salaries & Commissions paid		10,640.00
	Amortization of patents - 2,520.00 @ 8%		201.60
		14,750.00 @ 6-2/3%	983.33
	Depreciation on Autos - 1,500.00 @ 25% - 9 1/2 mo.		296.68
		2,030.00 @ 25% - 6 mo.	338.33
		5,686.75 @ 25% 3/4 used in business	1,066.27
	Auto Expense		2,067.75
	<u>INCOME FROM JAR BUSINESS</u>		<u>46,123.04</u>
			\$ 67,519.41

OLIVE HEIGHTS ORANGE RANCH

<u>RECEIPTS:</u>			
	Sale of Oranges		5,438.87
<u>DEDUCTIONS:</u>			
	Expense of Operation, Labor, Water, Taxes, Fertilizer, etc.		\$1,259.35
	Depreciation on Grove: Trees \$6000.00 @ 3%	180.00	1,439.35
	<u>INCOME FROM OLIVE HEIGHTS ORANGE RANCH</u>		<u>4,099.52</u>

1/4 INTEREST IN YORBA LINDA ORANGE RANCH

<u>RECEIPTS:</u>			
			9,677.63
<u>DEDUCTIONS:</u>			
	Taxes	441.57	
	Water	465.00	
	Fertilizer	759.74	
	Labor	1,236.35	
	Spraying	462.00	
	State Tax	5.88	
	Depreciation	215.00	3,562.54
	<u>NET INCOME</u>		<u>6,095.29</u>
	<u>1/4 INTEREST IN YORBA LINDA ORANGE RANCH</u>		<u>1,523.82</u>

INCOME FROM RENTALS

<u>WHITTIER BLVD:</u>			
	Rent Received		114.00
	Repairs, Taxes & Insurance	196.14	
	Depreciation, Cost \$3500.00 Rate 10%	350.00	54.14
	<u>NET LOSS WHITTIER BLVD. RENTAL</u>		<u>42.14</u>
<u>4861 CLINTON STREET:</u>			
	Rents Received		450.00
	Repairs, Taxes & Water	130.59	
	Depreciation, Cost \$3000.00 Rate 6-2/3%	200.00	336.29
	<u>NET PROFIT 4861 CLINTON ST. RENTAL</u>		<u>113.41</u>
	Royalties Received - \$4.88 loss 27 1/2% depletion 1.34		3.54
	Interest Received		3,956.56
	Dividends Received		3,970.59

<u>LOSS ON SALE OF STOCK:</u>		<u>Acquired</u>	<u>Cost</u>	<u>Sold</u>	
	Polsa Chico Oil Stock	1926	\$10,430.00	\$5,510.00	
	<u>GROSS INCOME</u>				<u>93,903.72</u>

<u>DEDUCTIONS:</u>			
	Taxes Paid		3,477.14
	Contributions: Christian Science Movement		500.00
	Loss: Investment in Congress Petroleum Corp. 1926		
	in hands of receiver - total loss		18,645.00
	Investment in Citizens Trust & Savings Bank		
	Trust B 5109, Oil Trust, well abandoned		3,500.00
	<u>TOTAL DEDUCTIONS</u>		<u>26,122.14</u>
			\$67,781.56

1/2 J.A. Kammerdiner 33,690.79
 1/2 Myrtle B. Kammerdiner 33,690.79
\$67,781.56

T.M. 245
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES FROM SALARIES OR WAGES OF MORE THAN \$5,000
AND INCOMES FROM BUSINESS, PROFESSION, RENTS, OR SALE OF PROPERTY

For Calendar Year 1930

File This Return With the Collector of Internal Revenue for Your District on or Before March 15, 1931

PRINT NAME AND ADDRESS PLAINLY BELOW

JAS. A. KAESTNER

237 So. Highland Ave.

LOS ANGELES

L.A.

CALIFORNIA

Occupation

Do Not Write in These Spaces

File
Code

Serial
Number

District

RECEIVED WITH REMITTANCE

MAR 16 1931

COLLECTOR OF INT. REV.
8th DISTRICT OF CAL.

Cash Check M.O. Cert. of Ind.

First Payment

1. Are you a citizen or resident of the United States? **Yes**
2. If you filed a return for 1929, to what Collector's office was it sent? **6th. Dist. Calif.**
3. In this a joint return of husband and wife? **No**
4. State name of husband or wife if a separate return was made and the Collector's office where it was sent. **Myrtle B. Kaestner 6th. Dist. Calif.**
5. Were you married and living with husband or wife on the last day of your taxable year? **Yes**
6. If not, were you on the last day of your taxable year supporting in your household one or more persons closely related to you?
7. If your status in respect to questions 5 and 6 changed during the year, state date and nature of change. **No change**
8. How many dependent persons (other than husband or wife) under 18 years of age or incapable of self-support were receiving their chief support from you on the last day of your taxable year? **Three**

Income Amount received Expenses paid (Explain in Schedule F)

1. Salaries, Wages, Commissions, etc. (State name and address of employer)
2. Income from Business or Profession. (From Schedule A)
3. Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except interest on tax-free covenant bonds)
4. Interest on Tax-free Covenant Bonds Upon Which a Tax was Paid at Source
5. Income from Partnerships. (State name and address)
6. Income from Fiduciaries. (State name and address)
7. Rents and Royalties. (From Schedule B)
8. Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule C)
9. Taxable Interest on Liberty Bonds, etc. (From Schedule F)
10. Dividends on Stock of Domestic Corporations
11. Other Income (including dividends on stock of foreign corporations). (State nature of income)

12. TOTAL INCOME IN ITEMS 1 TO 11

DEDUCTIONS

13. Interest Paid
14. Taxes Paid. (Explain in Schedule F)
15. Losses by Fire, Storm, etc. (Explain in Table at foot of page 2)
16. Bad Debts. (Explain in Schedule F)
17. Contributions. (Explain in Schedule F)
18. Other Deductions Authorized by Law. (Explain in Schedule F)
19. TOTAL DEDUCTIONS IN ITEMS 13 TO 18
20. NET INCOME (Item 12 minus Item 19)

See Schedule attached

EARNED INCOME CREDIT

COMPUTATION OF TAX (See Instruction 23)

21. Earned Income (not over \$30,000)	\$ 8781 94	33. Net Income (Item 20 above)	\$ 33890 79	44. Normal Tax (1 1/2% of Item 40)	\$ 60 00
22. Less Personal Exemption and Credit for Dependents	2350 00	34. Liberty Bond Interest (Item 9)		45. Normal Tax (3% of Item 42)	120 00
23. Balance (Item 21 minus 22)	\$ 6431 94	35. Dividends (Item 10)	1985 29	46. Normal Tax (5% of Item 43)	1077 78
24. Amount taxable at 1 1/2% (not over \$4,000)	\$ 4000 00	36. Credit for Dependents	1200 00	47. Surtax on Item 20 (see Instruction 23)	1210 17
25. Amount taxable at 3% (not over \$4,000)	2431 94	37. Personal Exemption	1150 00	48. Tax on Net Income (total of Items 44 to 47)	\$ 2467 95
26. Amount taxable at 5% (balance over \$8,000 of Item 23)		38. Total of Items 34 to 37	4335 29	49. Tax on Capital Gain or Loss (12 1/2% of Col. 8, Sched. D)	
27. Normal Tax (1 1/2% of Item 24)	\$ 60 00	39. Balance (Item 33 minus 38)	\$ 29555 50	50. Total of or difference between Items 48 and 49	\$ 2467 95
28. Normal Tax (3% of Item 25)	72 25	40. Amount taxable at 1 1/2% (not over \$4,000)	4000 00	51. Less Credit of 25% of Tax on Earned Income (Item 32)	\$ 33 24
29. Normal Tax (5% of Item 26)		41. Balance (Item 39 minus 40)	\$ 25555 50	52. Total Tax (Item 50 minus 51)	\$ 2434 71
30. Surtax on Item 21		42. Amount taxable at 3% (not over \$4,000)	4000 00	53. Less Income Tax Paid at Source	
31. Tax on Earned Net Income (total of Items 27 to 30)	\$ 132 96	43. Amount taxable at 5% (Item 41 minus 42)	\$ 21555 50	54. Income Tax paid to a foreign country or U. S. possession	
32. Credit of 25% of Tax (not over 25% of Items 30, 44, 45, and 46)	\$ 33 24			55. Balance of Tax (Item 52 minus Items 53 and 54)	2434 71

AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules and statements, has been examined by me, and to the best of my knowledge and belief, is a true and complete return made in good faith for the taxable year stated, pursuant to the Revenue Act of 1928 and the Regulations issued thereunder.

(If return is made by agent, the reason therefor must be stated on this line)

Sworn to and subscribed before me this 22 day of Aug, 1931.

NOTARIAL SEAL

(Signature of officer administering oath)

(Title)

(Address of agent)

An amended return must be marked "Amended" at top of return

Checks and drafts will be accepted only if payable at par

(Testimony of Dan O'Hanlon.)

JAS. A. KAMMERDINER—MYRTLE B. KAMMERDINER
Los Angeles, California

Year 1930.

Rotary Jar Operations

Income:

Local rentals	\$91,640.85	
Texas rentals	1,725.00	
Oklahoma rentals	675.00	
Wyoming rentals	2,137.50	
San Joaquin & Long Beach rentals	13,940.00	
Foreign Sales	25,824.60	\$135,942.95

Deductions:

Cost of manufacturing and repairing Jars	24,508.24	
General expense, advertising, legal exp., trucking, etc.	8,021.14	
Salaries and commissions paid.....	10,640.00	
Amortization of patents—		
\$2,520.00 @ 8%.....	201.60	
14,750.00 @ 6 $\frac{2}{3}$ %.....	983.33	
Depreciation on Autos—		
1,500.00 @ 25%—9 $\frac{1}{2}$ mo.....	296.88	
2,030.00 @ 25%—8 mo.....	338.33	
5,686.75 @ 25% $\frac{3}{4}$ used in business	1,066.27	
Auto Expense	2,067.75	48,123.54
Income from jar business.....		\$ 87,819.41
Olive Heights Orange Ranch		

Receipts:

Sale of Oranges	5,496.87
-----------------------	----------

Deductions:

Expense of Operation, Labor, Water, Taxes, Fertilizer, etc.	\$1,259.35	
Depreciation on Grove:		
Trees \$6000.00 @ 3%....	180.00	1,439.35

Income from Olive Heights Orange Ranch.....	4,059.52
---	----------

(Testimony of Dan O'Hanlon.)

JAS. A. KAMMERDINER—MYRTLE B. KAMMERDINER

Los Angeles, California

Year 1930.

Rotary Jar Operations

Income:

Local rentals	\$91,640.85	
Texas rentals	1,725.00	
Oklahoma rentals	675.00	
Wyoming rentals	2,137.50	
San Joaquin & Long Beach rentals	13,940.00	
Foreign Sales	25,824.60	\$135,942.95

Deductions:

Cost of manufacturing and repair- ing Jars	24,508.24	
General expense, advertising, legal exp., trucking, etc.	8,021.14	
Salaries and commissions paid.....	10,640.00	
Amortization of patents—		
\$2,520.00 @ 8%.....	201.60	
14,750.00 @ 6 $\frac{2}{3}$ %.....	983.33	
Depreciation on Autos—		
1,500.00 @ 25%—9 $\frac{1}{2}$ mo.....	296.88	
2,030.00 @ 25%—8 mo.....	338.33	
5,686.75 @ 25% $\frac{3}{4}$ used in business	1,066.27	
Auto Expense	2,067.75	48,123.54
Income from jar business.....		\$ 87,819.41
Olive Heights Orange Ranch		

Receipts:

Sale of Oranges	5,496.87
-----------------------	----------

Deductions:

Expense of Operation, La- bor, Water, Taxes, Fer- tilizer, etc.	\$1,259.35	
Depreciation on Grove:		
Trees \$6000.00 @ 3%....	180.00	1,439.35

Income from Olive Heights Orange Ranch.....	4,059.52
---	----------

(Testimony of Dan O'Hanlon.)

Jas. A. Kammerdiner—Myrtle B. Kammerdiner—
Year 1930—(Continued)

1/4 Interest in Yorba Linda Orange Ranch	
Receipts:	9,677.83
Deductions:	
Taxes	441.57
Water	465.00
Fertilizer	759.74
Labor	1,236.35
Spraying	462.00
State Tax	5.88
Depreciation	212.00
	3,582.54
Net Income	6,095.29
1/4 interest in Yorba Linda Ranch.....	1,523.82
Income From Rentals	
Whittier Blvd:	
Rents Received.....	114.00
Repairs, Taxes & Insurance	198.14
Depreciation, Cost \$3500.00	
Rate 10%	350.00
	548.14
Net from Whittier Blvd. Rental.....	434.14
4861 Clinton Street:	
Rents Received	450.00
Repairs, Taxes & Water....	136.59
Depreciation, Cost \$3000.00	
Rate 6 2/3%	200.00
	336.59
Net Profit 4861 Clinton St. Rental.....	113.41
Royalties Received—\$4.88 less 27 1/2% depletion \$1.34	3.54
Interest Received	3,958.58
Dividends Received	3,970.58

(Testimony of Dan O'Hanlon.)

Jas. A. Kammerdiner—Myrtle B. Kammerdiner—
Year 1930—(Continued)

Loss on Sale of Stock:

	Acquired	Cost	Sold	
Bolsa Chico Oil Stock	1928	\$10,430.00	\$3,319.00	7,111.00

Gross Income	93,903.72
--------------------	-----------

Deductions:

Taxes Paid	3,477.14
------------------	----------

Contributions: Christion Science Movement	500.00
--	--------

Loss: Investment in Congress Petro- leum Corp. 1928 in hands of receiver—total loss	18,645.00
---	-----------

Investment in Citizens Trust & Savings Bank Trust B 5109, Oil Trust, well aban- doned	3,500.00
--	----------

Total Deductions.....	26,122.14
-----------------------	-----------

\$67,781.58

1/2 J. A. Kammerdiner.....	33,890.79
----------------------------	-----------

1/2 Myrtle B. Kammerdiner.....	33,870.79
--------------------------------	-----------

\$67,781.58

[Endorsed]: Filed: Dec. 29, 1941.

Mr. Mitchell: Then the individual income tax
return of Mr. Kammerdiner for the year 1934.

The Clerk: That will be 32.

(The document referred to was received in
evidence and marked "Defendant's Exhibit
No. 32.")

FORM 1004 MUST BE FILED WITH THIS RETURN

INDIVIDUAL INCOME TAX RETURN

For NET INCOMES FROM SALARIES OR WAGES OF MORE THAN \$5,000
AND INCOMES FROM BUSINESS, PROFESSION, RENTS, OR SALE OF PROPERTY

For Calendar Year 1934

or fiscal year begun . . . 1934, and ended . . . 1935
File This Return Not Later Than the 15th Day of the Third Month Following the Close of the Taxable Year

PRINT NAME AND ADDRESS PLAINLY BELOW

JAS. A. KAMMERDINER
(Name) (If married, give name and address of wife, if this is a joint return)
237 South Highland Avenue
(Street and number, or rural route)
Los Angeles, California
(Post office) (County) (State)

Do Not Write in These Spaces

File No. **496**

Serial Number **809964**

District **1st**

Cash Check J.M.G. Cert. of Ind. First Payment

- State whether you are (a) a citizen of the United States, or (b) a resident alien.
- If you filed a return for the preceding year, in which Collector's office was it sent?
- Were you married and living with husband or wife during your taxable year?
- Is this a joint return of husband and wife?
- State name of husband or wife if a separate return is not made, and the Collector's office to which it was sent.
- If not married, were you during your taxable year supporting in your household one or more persons (other than your child) under 18 years of age or incapable of self-support received their chief support from you during your taxable year?
- How many dependent persons (other than husband or wife) under 18 years of age or incapable of self-support received their chief support from you during your taxable year?
- If your status in respect to question 3, 4, or 7 changed during the year, state date and nature of change.
- State whether your books are kept on cash or accrual basis.
- On the following check (✓) in proper block that (ONE) occupation from which you received principal amount in item 1.
 Physician, surgeon, or dentist
 Teacher, or school administrator
 Clergyman or religious worker
 Corporation executive or manager
 Judge or lawyer
 Technical engineer, chemist, or architect
 Other professional
 All other
- Did any person or persons advise you in respect of any question or matter affecting any item or schedule of this return, or assist or advise you in the preparation of the return, or actually prepare this return for you? If so, give the name and address of each person or persons and state the nature and extent of the assistance or advice rendered for you and the items or schedules in respect of which the assistance or advice was rendered. If this return was actually prepared by any person or persons other than yourself, state the source of the information reported in this return and the manner in which it was furnished to or obtained by each person or persons.
- Did you make a return of information on Forms 1000 and 1009 (see instructions 34) for the calendar year 1934? (Answer "yes" or "no")

INCOME

1. Salaries, Wages, Commissions, Fees, etc.	(State name and address of employer)	Amount received	Expenses paid (Deductions in Schedule D)
2. Income (or Loss) from Business or Profession.	(From Schedule A)		
3. Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except interest on tax-free covenant bonds)			
4. Interest on Tax-free Covenant Bonds Upon Which a Tax was Paid at Source			
5. Income (or Loss) from Partnerships, Syndicates, Pools, etc.	(State name, address, and kind of business)		
6. Income from Fiduciaries.	(State name and address)		
7. Rents and Royalties.	(From Schedule B)		
8. Capital Gain (or Loss).	(From Schedule C)		
9. Taxable Interest on Liberty Bonds, etc.	(From Schedule D)		
10. Dividends on Stock of: (a) Domestic Corporations subject to taxation under Title I of 1934 Act.			
(b) Domestic Corporations not subject to taxation under Title I of 1934 Act.			
(c) Foreign Corporations			
11. Other Income.	(State nature) (Use separate schedule, if necessary)		
12. TOTAL INCOME IN ITEMS 1 TO 11.		\$ 21,552.20	

DEDUCTIONS

13. Interest Paid.			
14. Taxes Paid.	(Explain in Schedule F)		
15. Losses by Fire, Storm, etc.	(Explain in table at foot of page 2)		
16. Bad Debts.	(Explain in Schedule F)		
17. Contributions.	(Explain in Schedule F)		
18. Other Deductions Authorized by Law.	(Explain in Schedule F)		
19. TOTAL DEDUCTIONS IN ITEMS 13 TO 18.			
20. NET INCOME (Item 12 minus Item 19)		\$ 19,036.14	

COMPUTATION OF TAX (See Instruction 23)

21. Net income (Item 20 above)	\$ 19,036.14	29. Normal tax (4% of Item 28)	\$ 761.45
22. Less: Personal exemption	\$ 1,050.00	30. Surtax on Item 24. (See Instruction 23)	1,275.33
23. Credit for Dependents	400.00	31. Total tax (Item 29 plus Item 30)	\$ 2,036.78
24. Balance (Surtax net income)	\$ 20,106.14	32. Less: Income tax paid at source (2% of Item 4)	\$ 4.50
25. Less: Interest on Liberty Bonds, etc. (Item 9)		33. Income tax paid to a foreign country or U.S. possession	4.50
26. Dividends (Item 10 (a))	635.02	34. Balance of Tax. (Item 31 minus Items 32 and 33)	2,032.28
27. Earned income credit. (See Instruction 22)	431.04		
28. Balance subject to normal tax.	\$ 19,036.14		

AFFIDAVIT (See Instruction 27)

I/we swear (or affirm) that this return (including its accompanying schedules and statements, if any) has been examined by me/us, and to the best of my/our knowledge and belief is a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Revenue Act of 1934 and the Regulations issued thereunder.

Sworn to and subscribed by Jas. A. Kammerdiner before me this 13 day of July, 1935. Marquette
 Notarial Seal of Marquette

AFFIDAVIT (See Instruction 27)

I/we swear (or affirm) that I/we prepared this return for the person or persons named herein and that the return (including its accompanying schedules and statements, if any) is a true, correct, and complete statement of all the information respecting the income tax liability of the person or persons for whom this return has been prepared of which I/we have any knowledge.

Sworn to and subscribed before me this 13 day of July, 1935. Walter S. Strickland
 Notarial Seal of Walter S. Strickland

[Endorsed]: Filed Dec. 29, 1941

(Testimony of Dan O'Hanlon.)

Mr. Mitchell: The individual income tax return of Mrs. Kammerdiner for the year 1934.

The Clerk: 33.

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 33.")

(Testimony of Dan O'Hanlon.)

Mr. Mitchell: The individual income tax return of Mrs. Kammerdiner for the year 1934.

The Clerk: 33.

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 33.")

DEFENDANT'S EXHIBIT NO. 33

FORM 1004 MUST BE FILED WITH THIS RETURN

INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES FROM SALARIES OR WAGES OF MORE THAN \$5.00
AND INCOMES FROM BUSINESS, PROFESSION, RENTS, OR SALE OF PROPERTY

For Calendar Year 1934

or fiscal year begun 1934, and ended 1935
File This Return Not Later Than the 15th Day of the Third Month Following the Close of the Taxable Year

PRINT NAME AND ADDRESS FULLY BELOW

MRS. MYRTLE KAMMERDINER
(Name) (If married and wife, if this is a joint return)
237 So. Highland Avenue
(Street and number, or rural route)
Los Angeles, California
(Post office) (County) (State)

File No. 1497
Serial 8009857
Number
District (Collector's Stamp)
LOS ANGELES OFFICE
Cash Check M.B. Short. of Ind.
First Payment

1. State whether you are (a) a citizen of the United States, or (b) a resident alien. Citizen
2. If you had a return for the preceding year, in which Collector's office was it sent? 6th, Calif.
3. Were you married and living with husband or wife during your taxable year? Yes
4. Is this a joint return of husband and wife? No
5. State name of husband or wife if a separate return was made and the Collector's office to which it was sent. 6th, Calif.
6. Was any dependent person (other than husband or wife) under 18 years of age or incapable of self-support received their chief support from you during your taxable year? No
7. Did any person or persons advise you in respect of any question or matter affecting any item or schedule of this return, or assist or advise you in the preparation of this return, or actually prepare this return for you? No. If so, give the name and address of each person so assisted and state the nature and extent of the assistance or advice received by you and the items or schedules in respect of which the assistance or advice was received. If this return was actually prepared by any person or persons other than yourself, state the nature of the assistance reported in this return and the manner in which it was furnished to be obtained by such person or persons. Office of Claude L. Perrier
8. Did you make a return of information on Forms 1006 and 1009 (See Instruction 31) for the calendar year 1934? (A "yes" or "no" answer.) No

ATTACH REMITTANCE HERE

INCOME		Amount received		Reported paid	
(State name and address of employer)		(Check in Schedule D)		(Check in Schedule D)	
1. Salaries, Wages, Commissions, Fees, etc.		\$	\$	\$	\$
2. Income (or Loss) from Business or Profession.	(From Schedule A)				
3. Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except interest on tax-free covenant bonds)	(State kind of business)				
4. Interest on Tax-free Covenant Bonds Upon Which a Tax was Paid at Source					
5. Income (or Loss) from Partnerships, Syndicates, Pools, etc.	(State name, address, and kind of business)				
Kammerdiner Rotary Jar Company, Los Angeles, California		Dividends	635.02		
		(Rented)	4310.44		
		(Other)	16606.75		
6. Income from Fiduciaries.	(State name and address)				
7. Rents and Royalties.	(From Schedule B)				
8. Capital Gain (or Loss).	(From Schedule C)				
9. Taxable Interest on Liberty Bonds, etc.	(From Schedule D)				
10. Dividends on Stock of: (a) Domestic Corporations subject to taxation under Title I of 1934 Act.					
(b) Domestic Corporations not subject to taxation under Title I of 1934 Act.					
(c) Foreign Corporations.					
11. Other Income.	(State nature) (Use separate schedule, if necessary)				
12. TOTAL INCOME IN ITEMS 1 TO 11.		\$	21,552.21		
DEDUCTIONS					
13. Interest Paid		\$			
14. Taxes Paid.	(Explain in Schedule F)				
15. Losses by Fire, Storm, etc.	(Explain in table at foot of page 7)				
16. Bad Debts.	(Explain in Schedule F)				
17. Contributions.	(Explain in Schedule F)				
18. Other Deductions Authorized by Law.	(Explain in Schedule F)				
19. TOTAL DEDUCTIONS IN ITEMS 13 TO 18.		\$			
20. NET INCOME (Item 12 minus Item 19)		\$	21,552.21		

COMPUTATION OF TAX (See Instruction 23)

21. Net income (Item 20 above)	\$	21,552.21			\$	761.45
22. Less: Personal exemption	\$	1,450.00				1,275.33
23. Credit for Dependents		1,450.00				2,036.78
24. Balance (Surplus net income)	\$	80,102.21				
25. Less: Interest on Liberty bonds, etc. (Item 9)	\$				4.50	
26. Dividends. (Item 10 (a))		635.02			4.50	
27. Earned income credit. (See Instruction 27)		431.04				
28. Balance subject to normal tax	\$	19,036.15				2,032.28
29. Normal tax (6% of Item 28)	\$					
30. Surplus on Item 24. (See Instruction 23)						
31. Total tax (Item 29 plus Item 30)	\$					
32. Less: Income tax paid at source (2% of Item 4)	\$					
33. Income tax paid to a foreign country or U.S. possession						
34. Balance of Tax. (Item 31 minus Items 32 and 33)	\$					

AFFIDAVIT (See Instruction 27)

I/We swear (or affirm) that this return (including its accompanying schedules and statements, if any) has been examined by me/us, and to the best of my/our knowledge and belief is a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Revenue Act of 1934 and the Regulations issued thereunder.

Sworn to and subscribed by Mrs. Myrtle Kammerdiner before me this 13 day of Feb, 1935.
Notary Public for the State of California
My commission expires on March 1, 1936

AFFIDAVIT (See Instruction 27)

I/We swear (or affirm) that I/we prepared this return for the person or persons named herein and that the return (including its accompanying schedules and statements, if any) is a true, correct, and complete statement of all the information respecting the income tax liability of the person or persons for whom this return has been prepared of which I/we have any knowledge.

Sworn to and subscribed before me this 13 day of Feb, 1935.
Notary Public for the State of California
My commission expires on March 1, 1936

[Endorsed]: Filed Dec. 29, 1941.

(Testimony of Dan O'Hanlon.)

Mr. Mitchell: The individual income tax return of Mr. Kammerdiner for the whole of the year 1935. [128]

The Clerk: 34.

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 34.")

[Endorsed]: Filed Dec. 29, 1941.

(Testimony of Dan O'Hanlon.)

Mr. Mitchell: The individual income tax return of Mrs. Kammerdiner for the period commencing January 1, 1935 to April 4, 1935, the date of her death.

The Clerk: 35.

(The document referred to was received in evidence and marked "Defendant's Exhibit No. 35.")

DEFENDANT'S EXHIBIT NO. 36

RETURN FORM MARKED "DUPLICATE" MUST BE FILED WITH THIS ORIGINAL RETURN

INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES FROM SALARIES OR WAGES OF MORE THAN \$5,000
AND INCOMES FROM BUSINESS, PROFESSION, RENTS, OR SALE OF PROPERTY

For Calendar Year 1935

or fiscal year begun Apr. 5, 1935, and ended Dec. 31, 1935

File This Return Not Later Than the 15th Day of the Third Month Following the Close of the Taxable Year

PRINT NAME AND ADDRESS PLAINLY BELOW

Estate of Myrtle Kammerdiner (Deceased)

237 So. Highland Ave.

Los Angeles

L.A.

Calif.

Do Not Write in These Spaces

File

Code

Serial

Number

810529

District

(Cashier's Receipt)

Cash

Checks

M.O.

Cert. of Ind.

First Payment

5th Dist. Calif formed April 5, 1935

No

James A. Kammerdiner

No

None

Cash

No

Office of Claude I. Parker
from data submitted by taxpayer



INCOME

1. Salaries, Wages, Commissions, Fees, etc. (State name and address of employer)
2. Net profit (or loss) from Business or Profession. (From Schedule A)
3. Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except interest on tax-free covenant bonds)
4. Interest on tax-free Covenant Bonds Upon Which a Tax was Paid at Source
5. Income (or loss) from Partnerships, Syndicates, Pools, etc. (Furnish name, address, and kind of business)
6. Income from Libraries. (Furnish name and address)
7. Rents and Royalties. (From Schedule B)
8. Capital Gain (or Loss). (From Schedule C)
9. Taxable Interest on Liberty Bonds, etc. (From Schedule D)
10. Dividends or Stock of: (a) Domestic Corporations subject to taxation under Title I of 1934 Act
(b) Foreign Corporations
(c) Other Income. (State nature) (Use separate schedule, if necessary)
12. TOTAL INCOME IN ITEMS 1 TO 11.

DEDUCTIONS

13. Interest Paid. (Explain in Schedule F)
14. Taxes Paid. (Explain in Schedule F)
15. Losses by Fire, Storm, etc. (Explain in table at foot of page 2)
16. Bad Debts (including loans determined to be worthless during taxable year). (Explain in Schedule F)
17. Contributions. (Explain in Schedule F)
18. Other Deductions Authorized by Law (including stock determined to be worthless during taxable year). (Explain in Schedule F)
19. TOTAL DEDUCTIONS IN ITEMS 13 TO 18.
20. NET INCOME. Item 12 minus Item 19

COMPUTATION OF TAX (See Instruction 23)

21. Net income. Item 20 above	\$ 28 636 23	29. Normal tax (4% of Item 20)	\$ 1 093 01
22. Less: Personal exemption.	\$ 1000 00	30. Surtax on Item 24. (See Instruction 23)	\$ 2 550 88
23. Credit for Dependents (Explain in Schedule F)	\$ 1 000 00	31. Total tax (Item 29 plus Item 30)	\$ 3 643 89
24. Balance Surtax net income	\$ 27 636 23	32. Less: Income tax paid at source (2% of item 4)	\$
25. Less: Interest on Liberty bonds, etc. Item 9	\$	33. Income tax paid to a foreign country or U. S. possession	\$
26. Dividends. Item 10 (a)	\$ 311 07	34. Balance of Tax. (Item 31 minus Items 32 and 33)	\$ 3 643 89
27. Earned income credit. (See Instruction 22)	\$ 311 07		
28. Balance subject to normal tax	\$ 27 325 16		

AFFIDAVIT (See Instruction 27)

I/we swear (or affirm) that this return (including its accompanying schedules and statements, if any) has been examined by me/us, and to the best of my/our knowledge and belief is a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Revenue Act of 1934 and the Regulations issued thereunder.

Return to and subscribed before

MUTUAL SEAL

A RETURN MADE BY AN AGENT MUST BE ACCOMPANIED BY POWER OF ATTORNEY (See Instruction 27)

AFFIDAVIT (See Instruction 27)

I/we swear (or affirm) that I/we prepared this return for the person or persons named herein and that the return (including its accompanying schedules and statements, if any) is a true, correct, and complete statement of all the information respecting the income tax liability of the person or persons for whom this return has been prepared of which I/we have any knowledge.

Sworn to and subscribed before me this day of

MUTUAL SEAL

[Endorsed]: Filed Dec. 29, 1941.



(Testimony of Dan O'Hanlon.)

By Mr. Mitchell:

Q. I hand you defendant's Exhibit 26, the individual income tax return of Mr. Kammerdiner for the year 1928, calling your attention to the first page under "income from partnerships," the amount \$67,000.00 and some odd dollars and the "J. Kammerdiner. Los Angeles, California." And then "ditto, earned income \$16,850.86." Do you recall how that difference arose?

A. No, I can't recall.

Q. A portion earned income, and a portion not earned income. [129]

A. Well, I imagine it is a percentage of the total amount.

Q. Total amount of what?

A. Of the partnership income. You are allowed to take so much of the partnership income as earned income. What does the amount of the partnership show for the total for his share?

Q. Well, let's see. You are now looking at partnership return for the year 1928, defendant's 21.

A. Well, here is the amount, earned income so much.

Q. How much?

A. \$16,850.86; and the balance is \$67,403.44.

Q. Do you have any thought as to what kind of income the other income was, that was not earned income? What kind of income did you intend that to be as reported?

(Testimony of Dan O'Hanlon.)

A. Well, in an income tax return on a partnership, you are only allowed so much of the total amount as earned income. You get a credit on your earned income of 10 per cent.

Q. I see.

A. It was all partnership, all from the partnership but a certain portion was allowed in which you could take a credit of 10 per cent. That was up to 20,000 at that time.

Q. I now hand you defendant's Exhibit 28 and 29, the income tax returns of the two spouses for the year 1929.

Will counsel stipulate that a partnership return, [130] information return, was filed for the year 1929?

Mr. Bloom: I don't know a thing about it. Who prepared that?

Mr. Mitchell: Mr. O'Hanlon.

By Mr. Mitchell:

Q. I wonder if you will look at this return and see if it will refresh your memory as to whether a partnership return was filed for the year 1929.

[131]

Q. Can you testify now whether you made out a partnership return for 1929?

A. No, I couldn't definitely tell.

Q. You can't do that? A. No.

Mr. Mitchell: That is all.

The Court: Cross examination.

(Testimony of Dan O'Hanlon.)

Cross Examination

By Mr. Bloom:

Q. What business or profession are you in, Mr. O'Hanlon?

A. I am in the real estate, insurance. I started out as being an accountant in Fullerton and found there wasn't much money in it so I decided to switch to the real estate insurance business, but I helped folks with their income taxes and I have made out 250 to 300 returns a year.

Q. What was the basis of your experience before you [133] went into making income tax returns?

A. I was auditor for the British Government before I came to the United States for the Ministry of Pensions. After the War I was an officer in the British Army.

Q. When did you come to the United States?

A. 1920.

Q. I believe you testified you have been making out income tax returns since 1920. You said about 20 years?

A. Yes.

Q. And prior to the making out of income tax returns in the United States, beginning in 1921, you had had no experience with the American income tax law; is that correct?

A. No, none at all.

Q. And all the experience that you gained from 1921 up to 1925 was in your own private study of

(Testimony of Dan O'Hanlon.)

the income tax law and the making out of returns; is that correct? A. Yes.

Q. Now, isn't it a fact, Mr. O'Hanlon, showing you defendant's Exhibit No. 17, that the only information you received from Mr. or Mrs. Kammerdiner is that portion which appears on page 2 thereof, immediately above your signature, with respect to whether they were or were not partners in the operation of the business?

A. Well, that is a pretty comprehensive statement, is it not?

Q. But that was all the information you got from Mr. [134] and Mrs. Kammerdiner, is it not?

A. There is plenty of information there.

Q. Will you answer my question either "yes it is," or "no, it isn't," whether it is comprehensive or whether it is very detailed?

A. I wouldn't swear to whether it was all or not.

Q. Now, isn't it a fact, Mr. O'Hanlon, in the making up of protests or income tax returns, clients will come in and they will give you a group of facts and then you sit down, after they are gone, and you either make out the return or the protest, whichever it happened to be, from that information?

A. No, I don't think I prepared more than two protests all the 20 years I have been in the business.

Q. Well, two were introduced in evidence.

A. Are there two?

Q. Yes.

(Testimony of Dan O'Hanlon.)

A. Probably that is all I have done. I think the protest was upheld, if I am not mistaken, upheld by the Board of Tax Appeals.

Q. Mr. O'Hanlon, you testified, I believe, in answer to a question by Mr. Mitchell with respect to earned income credit in the partnership, that you can take earned income credit where the partners work in the partnership; is that correct?

A. It is on the partnership return. You are allowed [135] so much unless there is no capital invested and if it is all services you can take it all off. If it is services and capital, you are only allowed to take so much off.

Q. You can also do that if you own and manage real estate, can't you, Mr. O'Hanlon?

A. Yes.

Q. And if two parties own real estate as joint tenants?

A. You mean in the real estate business or the ownership of real estate?

Q. The ownership of real estate and the collection of rents and the management of them.

A. Well, in the management of real estate, you could take it all off as earned income.

Q. Now, if you own the real estate and you rent but you also manage the real estate and see that it is kept in good repair, the Commissioner of Internal Revenue permits the services to be valued and that portion of the income to be taken as earned income; isn't that correct?

(Testimony of Dan O'Hanlon.)

A. Yes, sir, that is correct.

Q. And if two parties owned property, as joint tenants, and performed services as such joint tenants, and also had capital in the business, they could get the same benefit from their earned income credit, couldn't they? A. Yes.

Q. And it wouldn't make any difference whether they [136] were joint tenants or partners as to that portion, would it? A. No.

Q. On the partnership return for one of the years, Mr. Mitchell asked you why you included some Clinton property and other real estate, to which I believe you answered that Mrs. Kammerdiner furnished the information? A. Yes.

Q. Do you mean by that information that Mrs. Kammerdiner told you whether that property, or the income and expense from that property was to go on a partnership return, or on her own separate return, or Mr. Kammerdiner's return?

A. It was put on the partnership return and Mrs. Kammerdiner signed it under oath.

Q. But, Mr. O'Hanlon, the question was: why did you put it there, and your answer was that Mrs. Kammerdiner furnished you the information?

A. Sure she did.

Q. Did she furnish you that information and tell you to put it on the partnership return, Mr. O'Hanlon, or didn't she just say "Here is the information with respect to the Clinton Avenue property"?

A. I couldn't remember as to that but the fact

(Testimony of Dan O'Hanlon.)

that it is on the partnership return and signed by her, under oath, would indicate that she said to put it in the partnership return.

Q. Then you are just guessing as to why it is on the [137] partnership return?

A. I am not guessing.

Q. Don't you make up the return before the party comes to sign it or do they sign it before you make it up?

A. They give me the information. I can't make up any return unless I have the information first. The taxpayer gives me the information and from the information he gives me I prepared the return and when it is prepared the taxpayer signs and swears to it.

Q. Referring to the year 1926, and referring to defendant's Exhibit 20, supposing you tell us just what information Mrs. Kammerdiner gave you to make up that return.

A. I can't tell you except what is on the return.

Q. I am not asking you for what is on the return.

The Court: The answer is he can't tell you.

The Witness: I can't remember back that long what she told me. I am not a magician.

By Mr. Bloom:

Q. So that your answer to Mr. Mitchell's question that the reason why certain property appeared on this return is because Mrs. Kammerdiner gave you the information is because——

(Testimony of Dan O'Hanlon.)

A. It is self-evident.

Q. Never mind what is self-evident. Just answer my question now: your answer to Mr. Mitchell's question as to why did the Clinton Avenue property and certain other real [138] property appear on the 1928 return——

A. Because it was given to me to put on the return. .

Q. All right. You say it was given to you to put on the return? A. Yes.

Q. Tell us who gave you that information to put on the return? A. Mrs. Kammerdiner.

Q. Tell us what information Mrs. Kammerdiner gave you and just what she said.

A. I can't do that.

Q. Then how do you know it was given to you by Mrs. Kammerdiner to put on that return?

A. Because it was itself on the return and I put it on the record.

Q. And the only reason you can give that Mrs. Kammerdiner had anything to do with putting it on the return is because it is on there?

A. And signed by her.

The Court: In other words, you have no definite recollection. As you say you may handle 150 or 200 a year?

The Witness: Yes, your Honor.

The Court: You have no definite recollection as to each of them but you try as nearly as possible to put down the information that you derive from the client?

(Testimony of Dan O'Hanlon.)

The Witness: That is right. [139]

The Court: And the only recollection you have that the client gave you particular information is because you put it down there?

The Witness: Yes, your Honor. I wouldn't put it down unless it was given to me and she swore to it.

The Court: All right. Is there anything further from this witness?

By Mr. Bloom:

Q. Mr. O'Hanlon, for the years that you prepared these returns, 1925, 1926, 1927, '28 and '29, did the Government accept the returns as filed?

A. So far as I know they did.

Q. Then why did you file a protest?

A. Well, I think the protest was filed—if you don't file a protest, you can't come back later. You must file a protest when you put it in.

Q. You don't file a protest unless the Government refuses to recognize the correctness of the return, as filed, do you? A. Yes, sir.

Q. In other words, if the Government agent comes around and says, "The return that you filed is correct in all respects," then you protest it anyway?

A. No. While the community property tax was under discussion as to whether it was legal or not, a lot of folks put in partnership returns, like Mr. Kammerdiner and his [140] wife, and if you didn't

(Testimony of Dan O'Hanlon.)

put in a protest at that time, you couldn't object before the Board of Tax Appeals, your case was settled; but if you put in a protest, your case could be heard, and it was heard later and upheld.

Q. Upheld on the protest?

A. I don't know. I had nothing to do with the case when it came up later. I didn't take it to the Board of Tax Appeals. I am not an attorney before the Board of Tax Appeals but I understand the appeal was upheld by the Board of Tax Appeals.

Q. Mr. O'Hanlon, I am not trying to argue with you, but isn't it a fact that when you filed the return for 1925 and 1926, the agent came around and said that he would not recognize the right of Mr. and Mrs. Kammerdiner to divide the income between themselves? A. No, sir.

Q. That didn't happen?

A. No, he never came to me.

Q. I will ask you to look at this letter, dated August 14, 1928, addressed to Mr. J. Kammerdiner and ask if you can tell me what that is.

A. What was your question?

Q. Can you tell me what that is?

A. It is a letter from the Internal Revenue Collector denying the right to file a partnership return, dated 1928. You asked me if the Internal Revenue man came around in '25 [141] and '26 and told me that they couldn't file a return. I said that he didn't.

Q. Perhaps you misunderstood my question.

(Testimony of Dan O'Hanlon.)

What I asked you was whether or not the returns, as followed by you, for the year 1925 and '26 were accepted by the Government.

A. So far as I know they were. That thing is dated 1928.

The Court: The Statute of Limitations hadn't run. The mere fact that the Government waited before they objected to it doesn't make any difference. As far as fraud goes there is never a time limit, you know that, don't you?

The Witness: Yes, I know that.

The Court: Then your best answer is you don't know. You don't know whether they accepted it or not.

By Mr. Bloom: Referring to defendant's Exhibit 17 and 18, which are the two protests which you filed for and on behalf of the Kammerdiners, what did you mean by this statement appearing in there: "The protest is made against decision as mentioned in letter dated June 12, 1928, from Treasury Department, Internal Revenue Service, 728 South Hill Street, Los Angeles, California, and more particularly detailed in summary attached to above-mentioned Treasury Department letter.

"Exception is taken to the decision disallowing a partnership between Mr. and Mrs. J. Kammerdiner, and this is the [142] cause of the increase in tax."

Now, what is the letter to which you are referring, the one to which you are protesting?

(Testimony of Dan O'Hanlon.)

A. The increase in tax was caused by making one return instead of two.

The Court: Doesn't that carry to your mind the fact that there must have been a disallowance of the separate return on the partnership basis to warrant that protest; that you weren't just protesting in vacuo—you, being a British officer, know what that means. You weren't in vacuo protesting against something that hadn't happened?

The Witness: But the protest was made in 1928.

The Court: But it still related to the tax return that was disallowed as of the year before. The mere fact that you sent a check and the Government doesn't return it immediately doesn't mean anything. They wait until they levy a deficiency assessment and then they let you begin to worry and then you begin to work thereon. Isn't that the procedure in tax cases?

The Witness: I didn't carry on with the protest.

Mr. Mitchell: I am willing to stipulate that the deficiency was proposed by the Commission before the protest was signed.

The Court: It is evident the witness has some accounting ability but he doesn't know the technique of tax procedure after it leaves its first stage of filing. [143]

The Witness: I don't claim to, your Honor.

Mr. Bloom: We offer in evidence letter from the Treasury Department, Internal Revenue Serv-

(Testimony of Dan O'Hanlon.)

ice, dated June 12, 1928, being a report for the years 1925 and 1926 and addressed to Mrs. J. Kammerdiner.

The Court: All right. It may be received.

The Clerk: Plaintiff's Exhibit 11.

(The document referred to was received in evidence and marked "Plaintiff's Exhibit No. 11.")

PLAINTIFF'S EXHIBIT NO. 11

Treasury Department
Internal Revenue Service
728 So. Hill St.,
Los Angeles, Calif.

Office Of
Internal Revenue Agent in Charge

In re: Income Tax.

Date of report: Jun 12 1928

Years covered: 1925 and 1926.

Mrs. J. Kammerdiner,
237 So. Highland Ave.,
Los Angeles, Calif.

Madam:

There is attached a statement af adjustments which this office proposes to recommend, affecting your income tax liability, and a form of waiver of your right to file a petition with the United States Board of Tax Appeals. If a deficiency is indicated and the adjustments suggested with respect thereto

(Testimony of Dan O'Hanlon.)

are satisfactory, and you desire that the recommendations be forwarded promptly to the Bureau at Washington for review and final determination, the waiver should be signed and forwarded to this office. Interest is payable on deficiencies found due as set forth on the attached form 882.

If you do not agree with the conclusions set forth in the inclosed statement it is desired that every opportunity be afforded you to present to this office any objections or additional information. You are accordingly granted thirty days from date of this letter within which you may, if you so desire, protest the proposed adjustments. The protest and any additional statement of facts must be submitted to this office, executed in triplicate, under oath, and should contain the following information:

See note below.

(a) The name and address of the taxpayer (in the case of an individual the residence, and in the case of a corporation the principal office or place of business); (b) in the case of a corporation the name of the State of incorporation; (c) the designation by date and symbol of the letter advising of the proposed deficiency with respect to which the protest is made; (d) the designation of the year or years involved and a statement of the amount of tax in dispute for each year; (e) an itemized schedule of the findings to which the taxpayer takes exception; (f) a summary statement of the grounds upon

(Testimony of Dan O'Hanlon.)

which the taxpayer relies in connection with each exception; (g) in case the taxpayer desires a hearing, a statement to that effect; and (h) in case the protest is prepared or filed by an attorney or agent it shall have thereon a statement signed by such attorney or agent showing whether or not he prepared it and whether or not the attorney or agent knows of his own knowledge that the facts therein are true.

If a protest is filed it will be given careful consideration in this office before the recommendations are forwarded to Washington for action. In the event that you do not protest within the thirty-day period, the case will be forwarded immediately thereafter to the Bureau at Washington for review.

In the event the recommendations are not approved upon review in Washington, you will be notified and given opportunity to discuss the changes with this office, or should you fail to protest to this office, *any protest which you may subsequently file with Washington will be referred to this office for consideration.*

If a deficiency is indicated no remittance should be made until you receive notice of assessment from the Collector of Internal Revenue for your District.

Please acknowledge receipt by return mail.

Respectfully,

E. C. WRIGHT.

Internal Revenue Agent
in Charge.

(Testimony of Dan O'Hanlon.)

Note: Every affidavit, argument, brief, or statement of facts prepared or filed by an attorney or agent as argument or evidence in the matter of a claim or tax matter pending before the Treasury Department, shall have thereon a statement signed by such attorney or agent showing whether or not he prepared such document and whether or not the attorney or agent knows of his own knowledge that statements contained therein are true.

Enclosures:

ED

(Testimony of Dan O'Hanlon.)

Ralph B. Sells,
Examining Officer.In re: Mrs. J. Kammerdiner
237 So. Highland Ave.,
Los Angeles, Calif.Preliminary Statement
Summary

Year	Overassessment
1925	\$1,631.99
1926	2,512.43
Total.....	<u>\$4,144.42</u>

Income shown by Partnership return, J. Kammerdiner and Mrs. J. Kammerdiner, has been reported as all taxable to husband. Changes were explained to taxpayer who does not agree to change.

Schedule 1.

Block Adjustments 1925

	Return	Deductions from Income
4. Partnership	26,674.82	
7. Dividends	289.41	
	<u> </u>	
10. Total	26,964.23	
15. Contributions	150.00	
	<u> </u>	
18. Total	26,814.23	26,814.23
Total Income		None

Schedule 1-A

Explanation of Changes

Total Net Income..... 26,814.23
 Taken up on return of husband, J. Kammerdiner.
 Similar change made for the year 1926, Schedule 3.

(Testimony of Dan O'Hanlon.)

In re: Mrs. J. Kammerdiner.

Year 1925.

Schedule No. 2

Computation of Tax—1924 and Subsequent Years.

Income Tax.

Net income (from Schedule 1).....	None
Tax previously assessed.....	\$1,631.99
Overassessment	1,631.99

Schedule No. 3.

1926.

Block Adjustments.

	Return	Deductions from Income	Corrected
4. Partnership	33,405.09		
7. Dividend	368.75		
	<hr/>		
10. Total	33,773.84		
15. Contributions	200.00		
	<hr/>		
18.	33,573.84	33,573.84	None
Total Income			None.

Schedule No. 4.

Year 1926.

Computation of Tax—1924 and Subsequent Year.

Income Tax.

Net income from Schedule.....	None
Total tax assessable	None
Tax previously assessed	\$2,512.43
	<hr/>
Overassessment	\$2,512.43

[Endorsed]: Filed Dec. 29, 1941.

(Testimony of Dan O'Hanlon.)

Mr. Bloom: A letter from the Treasury Department, dated June 12, 1928, being a report of the years 1925, 1926, addressed to Mr. J. Kammerdiner.

The Clerk: Plaintiff's Exhibit 12.

(The document referred to was received in evidence and marked "Plaintiff's Exhibit No. 12.")

PLAINTIFF'S EXHIBIT No. 12

Treasury Department
Internal Revenue Service
728 So. Hill St.,
Los Angeles, Calif.

Office Of
Internal Revenue Agent in Charge
In re: Income Tax.
Date of report: Jun 12 1928
Years covered: 1925 and 1926.

Mr. J. Kammerdiner,
237 S. Highland Ave.
Los Angeles, Calif.

Sir:

There is attached a statement of adjustments which this office proposes to recommend, affecting your income tax liability, and a form of waiver of your right to file a petition with the United States Board of Tax Appeals. If a deficiency is indicated and the adjustments suggested with respect thereto are satisfactory, and you desire that the recommendations be forwarded promptly to the Bureau at Washington for review and final determination, the

(Testimony of Dan O'Hanlon.)

waiver should be signed and forwarded to this office. Interest is payable on deficiencies found due as set forth on the attached form 882.

If you do not agree with the conclusions set forth in the inclosed statement it is desired that every opportunity be afforded you to present to this office any objections or additional information. You are accordingly granted thirty days from date of this letter within which you may, if you so desire, protest the proposed adjustments. The protest and any additional statement of facts must be submitted to this office, executed in triplicate under oath, and should contain the following information:

See note below.

(a) The name and address of the taxpayer (in the case of an individual the residence, and in the case of a corporation the principal office or place of business); (b) in the case of a corporation the name of the State of incorporation; (c) the designation by date and symbol of the letter advising of the proposed deficiency with respect to which the protest is made; (d) the designation of the year or years involved and a statement of the amount of tax in dispute for each year; (e) an itemized schedule of the findings to which the taxpayer takes exception; (f) a summary statement of the grounds upon which the taxpayer relies in connection with each exception; (g) in case the taxpayer desires

(Testimony of Dan O'Hanlon.)

a hearing, a statement to that effect; and (h) in case the protest is prepared or filed by an attorney or agent it shall have thereon a statement signed by such attorney or agent showing whether or not he prepared it and whether or not the attorney or agent knows of his own knowledge that the facts therein are true.

If a protest is filed it will be given careful consideration in this office before the recommendations are filed to Washington for action. In the event that you do not protest within the thirty-day period, the case will be forwarded immediately thereafter to the Bureau at Washington for review.

In the event the recommendations are not approved upon review in Washington, you will be notified and given opportunity to discuss the changes with this office, or should you fail to protest to this office, *any protest which you may subsequently file with Washington will be referred to this office for consideration.*

If a deficiency is indicated no remittance should be made until you receive notice of assessment from the Collector of Internal Revenue for your district.

Please acknowledge receipt by return mail.

Respectfully,

E. C. WRIGHT.

Internal Revenue Agent
in Charge.

Note: Every affidavit, argument, brief, or statement of facts prepared or filed by an attorney or

(Testimony of Dan O'Hanlon.)

agent as argument or evidence in the matter of a claim or tax matter pending before the Treasury Department shall have thereon a statement signed by such attorney or agent showing whether or not he prepared such document and whether or not the attorney or agent knows of his own knowledge that statements contained therein are true.

Inclosures:

ED

Waiver of Right to File a Petition with
the United States Board of Tax Appeals

The undersigned taxpayer hereby waives the right to file a petition with the United States Board of Tax Appeals under Section 274(a) of the Revenue Act of 1926, and consents to the assessment and collection of a deficiency in tax for the years 1925 and 1926 aggregating \$10190.26, as indicated in the statement of the Internal Revenue Agent in Charge at Los Angeles, Calif. dated Jun 12, 1928.

Summary

Years	Additional Tax
1925	\$ 4,220.70
1926	5,969.56
Total.....	10,190.26

.....
(Name)

.....
(Address)

Date By

(Testimony of Dan O'Hanlon.)

Note.—This waiver does not extend the statute of limitations for refund or assessment of tax, and is not an agreement as provided under Section 1106 of the Revenue Act of 1926, but its execution and filing at the address shown in the accompanying letter will expedite the adjustment of your income tax liability as indicated above.

Ralph B. Sell,
Internal Revenue Agent.

In re: Mr. J. Kammerdiner,
237 S. Highland Ave.,
Los Angeles, Calif.

Preliminary Statement.
Summary.

Years	Additional Tax
1925	\$ 4,220.70
1926	5,969.56
Total.....	<hr/> 10,190.26

Principal cause of additional tax:

Partnership of Mr. and Mrs. Kammerdiner, the income of which appears to be community income taxable to husband.

Changes discussed with taxpayer who does not agree to change.

Taxpayer is married, living with wife and two children under 18 and principal support of mother-in-law.

Taxpayer objects to the change based on the following argument: "The undersigned James A.

(Testimony of Dan O'Hanlon.)

Kammerdiner and Myrtle B. Kammerdiner, husband and wife, of Los Angeles, California, hereby state, declare and agree that the business of manufacturing, renting and selling Rotary Jars, heretofore conducted by them under the name of James A. Kammerdiner, at 237 South Highland Avenue, Los Angeles, California, all the assets of which business is their community property, is now and all increase or change thereof shall be, their joint property with right of survivorship.

In Witness Whereof we have hereunto affixed our signature at the City of Los Angeles, California on the 3d day of Jan. 1928."

Taxpayers state that they had an oral agreement prior to the above. First return as a partnership made in 1925.

Provisions of Sec. 1106(b) explained to taxpayer.

"Rotary Jars", a patent device used to release oilwell equipment that at times get stuck in well while drilling for oil.

[Endorsed]: Filed Dec. 29, 1941.

(Testimony of Dan O'Hanlon.)

In re: Mr. J. Kammerdiner.

Schedule 1.

Block Adjustments 1925.

	Return	Additions to Income	Deductions from Income	Corrected
2. Business		54,333.65		54,333.65
4. Partnership	29,492.71		26,674.82	2,817.89
5. Rent		142.83		142.83
7. Dividends	289.41	289.41		578.82
10. Total				57,873.19
11. Interest Pd.			310.78	310.78
12. Taxes			816.07	816.07
15. Contributions			150.00	150.00
17. Total				1,276.85
Total Income....	29,782.12	54,765.89	27,951.67	56,596.34

Schedule 1-A

Explanation of Changes.

Total Net Income shown by return of

J. Kammerdiner	\$29,782.12
Mrs. J. Kammerdiner.....	26,814.23

As amended—Joint return.....\$56,596.35

Total Net Income shown by the Partnership return, J. Kammerdiner and Mrs. J. Kammerdiner and wife's income all taken up as taxable to Mr. J. Kammerdiner.

Name of Taxpayer—Mr. J. Kammerdiner.

Schedule No. 2

Year—Period—ended 1925

Computation of Tax—1924 and Subsequent Years

Income Tax

Net income (from Schedule 1).....	\$56,596.34
Less: Net loss (section 206).....\$.....	
Capital net gain	
Income subject to surtax.....	\$56,596.34

(Testimony of Dan O'Hanlon.)

Less: Dividends	\$ 578.82	
Interest on Liberty Bonds, etc.		
Personal exemption and credit for dependents	4,700.00	5,278.82
		<hr/>
Balances subject to normal tax.....		\$51,317.52
		<hr/>
Normal tax at 1½ on \$4,000.....	\$ 60.00	
Normal tax at 3 on 4,000.....	120.00	
Normal tax at 5 on 43,317.52	2,165.88	
Surtax on 56,596.34	3,889.45	
Tax at 12½% on capital net gain of \$.....		\$ 6,235.33
		<hr/>
Fiscal year income from partnerships, etc.:		
Normal tax at ... on \$.....	\$.....	
Normal tax at ... on \$.....	
Normal tax at ... on \$.....	
Surtax on.....	\$.....	
		<hr/>
Total tax		\$ 6,235.33
		<hr/>
Less: Credit of 25% for earned net income (from Schedule 3).....	\$ 41.05	
Income tax paid at source.....	
Taxes paid to a foreign country		41.05
		<hr/>
Total tax assessable		\$ 6,194.28
Tax previously assessed		1,973.58
		<hr/>
Additional tax to be assessed (over assessment)		\$ 4,220.70

In re: J. Kammerdiner.

Schedule No. 3

Computation of Earned Income Credit—
1924 and Subsequent Years

Year 1925.

Income Tax

Earned net income (not over \$10,000 for 1924,
or \$20,000 thereafter)\$11,630.30

(Testimony of Dan O'Hanlon.)

Less personal exemption and credit for dependents	4,700.00
Balance	\$ 6,930.30
Normal tax at 1½% on \$4000.....\$	60.00
Normal tax at 3% on \$2930.30.....	87.91
Surtax on \$11,630.30.....	16.30
Total tax	\$ 164.21
Credit of 25 per cent.....	\$ 41.05
(2) 54333.65	
(4) 2817.89	
58151.54	
20	
11630.3080	

In re: J. Kammerdiner.

Schedule No. 4

Block Adjustments 1926.

	Return	Additions to Income	Deductions from Income	Corrected
2. Business		67,469.98		67,469.98
3. Interest		13.59		13.59
4. Partnership	33,405.09		33,405.09	
5. Rents		29.54		29.54
7. Dividends	368.75	368.75		737.50
9. Joint Venture	3,507.83			3,507.83
10. Total				71,758.44
12. Taxes Paid			1,701.93	1,701.93
15. Contributions			200.00	200.00
17. Total				1,901.93
Total Income	37,281.67	67,881.86	35,307.02	69,856.51

(Testimony of Dan O'Hanlon.)

Schedule 4-A.

1926.

Explanation of Changes.

Total net Income as shown by return of	
J. Kammerdiner	\$37,281.67
Mrs. J. Kammerdiner	33,573.84
	<hr/>
Total.....	70,855.51
Less error in computation.....	999.00
	<hr/>
Amended—Joint return	\$69,856.51
In re: J. Kammerdiner	

Profit and Loss Statement.

Item		
Sale and rentals.....		\$119,862.43
Cost of equipment, repairs		
and expenses	\$ 40,249.28	
Salary and Commissions.....	9,525.00	
Auto expenses	1,155.81	
Auto depn. 25%	1,305.00	
Loss on Jars	156.75	
	<hr/>	
Total deduction		53,392.45
		<hr/>
2. Business Income (Sch. 4).....		67,469.98
5. Total receipts		537.50
Taxes and repairs	367.96	
Depn. 4%	140.00	507.96
	<hr/>	<hr/>
Rental Income		29.54
9. Joint Venture		
Orange Grove $\frac{1}{3}$ interest.....		3,507.83

(Testimony of Dan O'Hanlon.)

Name of Taxpayer—J. Kammerdiner.

Schedule No. 5

Year 1926.

Computation of Tax—1924 and Subsequent Years

Income Tax	
Net income (from Schedule 1).....	\$69,856.51
Less: Net loss (section 206).....\$.....	
Capital net gain
Income subject to surtax.....	\$69,856.51
Less: Dividends	\$ 737.50
Interest on Liberty Bonds, etc.	
Personal exemption and credit for dependents	4,700.00 5,437.50
Balances subject to normal tax.....	\$64,419.01
Normal tax at 1½ on \$4,000.00.....\$ 60.00	
Normal tax at 3 on 4,000.00..... 120.00	
Normal tax at 5 on 56,419.00..... 2,820.95	
Surtax on \$69,856.51..... 6,035.61	
Tax at 12½% on capital net gain of \$.....	\$ 9,036.56
Fiscal year income from partnerships, etc.:	
Normal tax at ... on \$.....\$.....	
Normal tax at ... on \$.....	
Normal tax at ... on \$.....	
Surtax on.....\$.....	
Total tax	\$ 9,036.56
Less: Credit of 25% for earned net income (from Schedule 6).....\$ 74.67	
Income tax paid at source.....	
Taxes paid to a foreign country	74.67
Total tax assessable.....	\$ 8,961.89
Tax previously assessed.....	2,992.33
Additional tax to be assessed (over assessment)	\$ 5,969.56

(Testimony of Dan O'Hanlon.)

In re: J. Kammerdiner.

Schedule No. 6

Computation of Earned Income Credit—
1924 and Subsequent Years

Year 1925.

Income Tax

Earned net income (not over \$10,000 for 1924, or \$20,000 thereafter).....	\$14,195.56
Less personal exemption and credit for de- pendents	4,700.00
Balance	9,495.56
Normal tax at 1½% on \$4000	\$ 60.00
Normal tax at 3% on \$4000	120.00
Normal tax at 5% on \$1,495.56.....	74.78
Surtax on \$14,195.56	43.91
Total tax	298.69
Credit of 25 per cent.....	74.67
Block	
(2) 67469.98	
(9) 3507.83	
70977.81	
20%	
14195.5620	

Endorsed]: Filed Dec. 29, 1941.

Mr. Bloom: A letter from the Treasury Department, Washington, D. C., addressed to Mr. J. Kammerdiner, dated August 14, 1928, being a review of the report sent in for the years 1925 and 1926.

The Clerk: 13. [144]

(Testimony of Dan O'Hanlon.)

(The document referred to was received in evidence and marked "Plaintiff's Exhibit No. 13.")

PLAINTIFF'S EXHIBIT No. 13

(959M)

Form NP-1b

Treasury Department

Washington

Aug. 14, 1928

Office of

Commissioner of Internal Revenue

Address Reply to

Commissioner of Internal Revenue

And Refer to

IT:AR:B-10

CEJ

Mr. J. Kammerdiner,

237 South Highland Avenue,

Los Angeles, California.

Sir:

A review of the report submitted by the Internal Revenue Agent in Charge, San Francisco, California, covering your tax liability for the years 1925 and 1926, discloses a deficiency of \$10,190.26.

The recommendations of the Revenue Agent above indicated have been approved by this office after consideration of the protest filed with said agent in connection therewith. If you acquiesce in the proposed adjustments as shown in this letter and the accompanying statement, you are requested to execute the enclosed form and forward it to

(Testimony of Dan O'Hanlon.)

the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:AR:B-10-CEJ.

If, however, you do not acquiesce in all of the proposed changes, you will be afforded an opportunity for hearing in the Unit at Washington upon request.

If no reply is received within 20 days from the date of this letter it will be assumed that no hearing is desired and the Bureau will proceed to close the case in the usual manner.

If after said hearing and consideration by this office of evidence or briefs of argument submitted, the Commissioner finally determines that there is a deficiency, you will be advised thereof by registered mail in accordance with the provisions of Section 274 of the Revenue Act of 1926. Should you not agree to the deficiency as finally determined by the Commissioner, you will be allowed 60 days from the date of mailing of the registered letter (not counting Sunday as the sixtieth day) in which to file a petition with the United States Board of Tax Appeals for a redetermination of the deficiency.

Respectfully,

C. B. ALLEN,

Deputy Commissioner.

By L. B. ROBINSON,

Head of Division.

Enclosures:

Statement

Form 866.

Form 882.

(Testimony of Dan O'Hanlon.)

STATEMENT

IT:AR:B-10

CEJ

Aug 14 1928

In re: Mr. J. Kammerdiner,
237 South Highland Avenue,
Los Angeles, California.

Year	Deficiency in Tax
1925	\$ 4,220.70
1926	5,969.56
Total	<u>\$10,190.26</u>

Reference is made to the report of the Internal Revenue Agent in Charge, San Francisco, California, covering your tax liability for the years 1925 and 1926, and to your protest submitted under date of June 28, 1928.

Careful consideration has been accorded your protest in connection with the agent's findings.

Your contention that a partnership existed between you and your wife during the years 1925 and 1926 and that your wife held a vested interest in such partnership as her separate property has been denied. As no specific evidence has been furnished to substantiate your contention the total income received by you and Mrs. Kammerdiner during the years in question is considered to be community income taxable to you.

1925

Net income reported\$29,782.12

Add:

1. Income transferred from wife's return.... 26,814.22

Net income adjusted\$56,596.34

Computation of Tax

Net income subject to surtax.....\$56,596.34

Less:

Dividends\$ 578.82

Personal exemption and credit

for dependents 4,700.00 5,278.82

Balance subject to normal tax.....\$51,317.52

(Testimony of Dan O'Hanlon.)

Normal tax at 1½% on \$4,000.00.....	\$ 60.00
Normal tax at 3% on \$4,000.00.....	120.00
Normal tax at 5% on \$43,317.52.....	2,165.88
Surtax on \$56,596.34.....	3,889.45

Total tax\$ 6,235.33

Less:

Credit of 25% for earned net income..... 41.05

Total tax assessable.....\$ 6,194.28

Tax previously assessed 1,973.58

Deficiency in tax.....\$ 4,220.70

Explanation of Changes

The reason for the increase in your tax liability has been explained above.

1926

Net income reported on return.....\$37,281.67

Add:

1. Income transferred from wife's return 33,573.84

Total\$70,855.51

Deduct:

2. Error in computation on return..... 999.00

Net income subject to surtax.....\$69,856.51

Less:

Dividends\$ 737.50

Personal exemption and credit

for dependents 4,700.00 5,437.50

Balance subject to normal tax..... \$64,419.01

Normal tax at 1½% on \$4,000.00.....\$ 60.00

Normal tax at 3 % on \$4,000.00..... 120.00

Normal tax at 5% on \$56,419.01..... 2,820.95

Surtax on \$69,856.51..... 6,035.61

Total tax\$ 9,036.56

(Testimony of Dan O'Hanlon.)

Less:

Credit of 25% for earned net income..... 74.67

Total tax assessable\$ 8,961.89

Tax previously assessed 2,992.33

Deficiency\$ 5,969.56

Explanation of Changes

1. Income reported on your wife's return has been included in your return for reasons explained above.

2. Due to errors in computation, income reported on your return was overstated by \$999.00.

Payment should not be made until a bill is received from the Collector of Internal Revenue for your district, and remittance should then be made to him.

[Endorsed]: Filed Dec. 29, 1941.

Mr. Bloom: A letter dated July 12, 1929, being a report for the year 1927 from the Treasury Department, Internal Revenue Service, addressed to Mrs. J. Kammerdiner.

The Court: It may be received.

The Clerk: Plaintiff's Exhibit 14.

(The document referred to was received in evidence and marked "Plaintiff's Exhibit No. 14.")

(Testimony of Dan O'Hanlon.)

PLAINTIFF'S EXHIBIT No. 14

Treasury Department
Internal Revenue Service
728 South Hill Street
Los Angeles, California

Office of
Internal Revenue Agent in Charge

Mrs. J. Kammerdiner
237 South Highland Avenue
Los Angeles, California

In re: Income Tax
Date of report: Jul 12 1929
Year covered: 1927

Madam:

There is attached a statement of adjustments which this office proposes to recommend, affecting your income tax liability, and a form of waiver of your right to file a petition with the United States Board of Tax Appeals. If a deficiency is indicated and the adjustments suggested with respect thereto are satisfactory, and you desire that the recommendations be forwarded promptly to the Bureau at Washington for review and final determination, the waiver should be signed and forwarded to this office. Intetest is payable on deficiencies found due as set forth on the attached form 882.

If you do not agree with the conclusions set forth in the inclosed statement it is desired that every

(Testimony of Dan O'Hanlon.)

opportunity be afforded you to present to this office any objections or additional information. You are accordingly granted thirty days from date of this letter within which you may, if you so desire, protest the proposed adjustments. The protest and any additional statement of facts must be submitted to this office, executed in triplicate under oath, and should contain the following information:

(a) The name and address of the taxpayer (in the case of an individual the residence, and in the case of a corporation the principal office or place of business); (b) in the case of a corporation the name of the State of incorporation; (c) the designation by date and symbol of the letter advising of the proposed deficiency with respect to which the protest is made; (d) the designation of the year or years involved and a statement of the amount of tax in dispute for each year; (e) an itemized schedule of the findings to which the taxpayer takes exception; (f) a summary statement of the grounds upon which the taxpayer relies in connection with each exception; (g) in case the taxpayer desires a hearing, a statement to that effect; (h) in case the protest is prepared or filed by an attorney or agent it shall have thereon a statement signed by such attorney or agent showing whether or not he prepared it and whether or not the attorney or agent knows of his own knowledge that the facts therein are true.

(Testimony of Dan O'Hanlon.)

If a protest is filed it will be given careful consideration in this office before the recommendations are forwarded to Washington for action. In the event that you do not protest within the thirty-day period, the case will be forwarded immediately thereafter to the Bureau at Washington for review.

In the event the recommendations are not approved upon review in Washington, you will be notified and given opportunity to discuss the changes with this office, or should you fail to protest to this office, any protest which you may subsequently file with Washington will be referred to this office for consideration.

If a deficiency is indicated no remittance should be made until you receive notice of assessment from the Collector of Internal Revenue for your district.

Please acknowledge receipt by return mail.

Respectfully,

E. C. WRIGHT,

Internal Revenue Agent in
Charge.

Inclosures:

Examining Officer:
Eskridge

In re: Mrs. J. Kammerdiner
237 South Highland Avenue
Los Angeles, California

STATEMENT OF TOTAL TAX LIABILITY

Year	Tax Previously Assessed	Adjustments Proposed in Accompanying Report		Correct Tax Liability
		Deficiency	Overassessment	
1927	\$4,335.61	—	\$4,335.61	None
Totals	\$4,335.61	—	\$4,335.61	None

(Testimony of Dan O'Hanlon.)

Schedule 1
Explanation of Items

Net income reported.....	\$45,563.74
Net income adjusted.....	None

Income representing one half share of profits from business has been included in husband's return.

Schedule 2

	Year 1927
Computation of Tax—Income Tax	
Net income	None
Total tax assessable.....	None
Tax previously assessed.....	\$4,335.61
Overassessment	\$4,335.61

[Endorsed]: Filed Dec. 29, 1941.

Mr. Bloom: A letter from the Treasury Department, Internal Revenue Service, addressed to J. Kammerdiner, being dated July 12, 1929, being report for the year 1927.

The Clerk: 15 for plaintiff.

(The document referred to was received in evidence and marked "Plaintiff's Exhibit No. 15.")

(Testimony of Dan O'Hanlon.)

PLAINTIFF'S EXHIBIT No. 15

Treasury Department
Internal Revenue Service
728 South Hill Street
Los Angeles, California

Office of
Internal Revenue Agent in Charge

James Kammerdiner
237 South Highland Avenue
Los Angeles, California

In re: Income Tax

Date of report: Jul. 12, 1929

Year covered: 1927

Sir:

There is attached a statement of adjustments which this office proposes to recommend, affecting your income tax liability, and a form of waiver of your right to file a petition with the United States Board of Tax Appeals. If a deficiency is indicated and the adjustments suggested with respect thereto are satisfactory, and you desire that the recommendations be forwarded promptly to the Bureau at Washington for review and final determination, the waiver should be signed and forwarded to this office. Interest is payable on deficiencies found due as set forth on the attached form 882.

If you do not agree with the conclusions set forth in the inclosed statement it is desired that every opportunity be afforded you to present to this office

(Testimony of Dan O'Hanlon.)

any objections or additional information. You are accordingly granted thirty days from date of this letter within which you may, if you so desire, protest the proposed adjustments. The protest and any additional statement of facts must be submitted to this office, executed in triplicate under oath, and should contain the following information:

(a) The name and address of the Taxpayer (in the case of an individual the residence, and in the case of a corporation the principal office or place of business); (b) in the case of a corporation the name of the State of incorporation; (c) the designation by date and symbol of the letter advising of the proposed deficiency with respect to which the protest is made; (d) the designation of the year or years involved and a statement of the amount of tax in dispute for each year; (e) an itemized schedule of the findings to which the taxpayer takes exception; (f) a summary statement of the grounds upon which the taxpayer relies in connection with each exception; (g) in case the taxpayer desires a hearing, a statement to that effect; and (h) in case the protest is prepared or filed by an attorney or agent it shall have thereon a statement signed such attorney or agent showing whether or not he prepared it and whether or not the attorney or agent knows of his own knowledge that the facts therein are true.

(Testimony of Dan O'Hanlon.)

If a protest is filed it will be given careful consideration in this office before the recommendations are forwarded to Washington for action. In the event that you do not protest within the thirty-day period, the case will be forwarded immediately thereafter to the Bureau at Washington for review.

In the event the recommendations are not approved upon review in Washington, you will be notified and given opportunity to discuss the changes with this office, or should you fail to protest to this office, *any protest which you may subsequently file with Washington will be referred to this office for consideration.*

If a deficiency is indicated no remittance should be made until you receive notice of assessment from the Collector of Internal Revenue for your district.

Please acknowledge receipt by return mail.

Respectfully,

E. C. WRIGHT,

Internal Revenue Agent in
Charge.

Inclosures: 1a

Examining Officer:
P. Eskridge

In re: James Kammerdiner
237 South Highland Avenue
Los Angeles, California

STATEMENT OF TOTAL TAX LIABILITY

Year	Tax Previously Assessed	Adjustments Proposed in Accompanying Report		Correct Tax Liability
		Deficiency	Overassessment	
1927	\$4,386.60	\$9,619.95	—	\$14,006.55
Totals	\$4,386.60	\$9,619.95	—	\$14,006.55

(Testimony of Dan O'Hanlon.)

1927

Cause of additional tax is due to the disallowance of income from business reported as partnership income in the return of the wife, as shown in a separate report.

Taxpayer and wife filed separate returns, each reporting one half of profit from business.

Since investigation in prior years discloses that no partnership books are kept showing capital account, investment on profit and loss account, and that taxpayer and wife had no separate bank accounts, it is considered that the wife did not hold a vested interest in partnership. The total income is held to be taxable on a joint return.

Taxpayer is married, living with his wife, has two dependent children under eighteen years of age, and is chief support of mother-in-law.

Income from business was checked on copy of partnership return and found correct as reported. No record of partnership return in this office.

Schedule 1
Block Adjustments

	Return	Additions to Income	Deductions from Income	Corrected
4. Income from business	\$45,862.53	\$45,862.53		\$91,725.06
7. Dividends	101.21	101.21		202.42
10. Total income	\$45,963.74	\$45,963.74		\$91,927.48
15. Contributions	None		\$400.00	400.00
17. Total deductions	None			400.00
18. Net income	\$45,963.74	\$45,963.74	\$400.00	\$91,527.48

Schedule 2
Explanation of Items

Net income reported	\$45,963.74
Net income adjusted	91,527.48
Increase in income	\$45,563.74

(Testimony of Dan O'Hanlon.)

Net income of \$45,563.74 reported by taxpayer's wife has been included in joint return.

Schedule 3

Year 1927

Computation of Earned Income Credit
Income Tax

Earned net income.....	\$18,385.50
Less personal exemption and credit for dependents	4,700.00
Balance	\$13,685.50
Normal tax at 1½% on \$4,000.00	\$ 60.00
Normal tax at 3% on \$4,000.00	120.00
Normal tax at 5% on \$5,685.50	284.28
Surtax on \$18,385.50.....	155.42
	619.70
Credit of 25%.....	\$ 154.92
Twenty percent of net income from business equals \$18,385.50.	

Schedule 4

Year 1927

Computation of Tax—Income Tax

Net income (from Schedule 1).....	\$91,527.48
Less net loss	None
Income subject to surtax.....	\$91,527.48
Less: Dividends	\$ 202.42
Personal exemption and credit for dependents	4,700.00
	4,902.42
Balance subject to normal tax.....	\$86,625.06
Normal tax at 1½% on \$4,000.00	\$ 60.00
Normal tax at 3% on \$4,000.00	120.00
Normal tax at 5% on \$78,625.06	3,931.25
Surtax on \$91,527.48.....	10,050.22
	14,161.47
Total tax	\$14,161.47

(Testimony of Dan O'Hanlon.)

Less: Credit of 25% for earned net income (from Schedule 3)....\$	154.92	
		154.92
Total tax assessable		\$14,006.55
Tax previously assessed		4,386.60
Additional tax to be assessed.....	\$	9,619.95

[Endorsed]: Filed Dec. 29, 1941.

Mr. Bloom: A letter from the Treasury Department, dated October 14, 1929, to Mr. J. Kammerdiner, being a deficiency letter, commonly known as a 90-day letter.

The Clerk: 16.

(The document referred to was received in evidence and marked "Plaintiff's Exhibit No. 16.")

(Testimony of Dan O'Hanlon.)

PLAINTIFF'S EXHIBIT No. 16

"Exhibit A"

Treasury Department
Washington

Oct. 14, 1929.

Office of
Commissioner of Internal Revenue.

Mr. James Kammerdiner,
237 South Highland Avenue,
Los Angeles, California.

Sir:

In accordance with Section 274 of the Revenue Act of 1926, you are advised that the determination of your tax liability for the years 1927 discloses a deficiency of \$9,619.95, as shown in the statement attached.

The section of the law above mentioned allows you to petition the United States Board of Tax Appeals within sixty days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter for a redetermination of your tax liability.

However, If You Do Not Desire to Petition, you are requested to execute the inclosed Form 866 and forward both original and duplicate to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing of this

(Testimony of Dan O'Hanlon.)

agreement form will expedite the closing of your return by permitting an early assessment of any deficiencies and preventing accumulation of interest charges, since the interest period terminates thirty days after filing the agreement form, or on the date assessment is made, whichever is earlier; Whereas If No Agreement Is Filed, interest will accumulate to the date of assessment of the deficiencies.

Respectfully,

ROBT. H. LUCAS,

Commissioner.

By (Signed) DAVIS BURNET,

Deputy Commissioner.

Inclosures:

Statement

Form 866

Form 882

STATEMENT

IT:AR:B-9

WEF

Oct 14 1929

In re: Mr. James Kammerdiner,
237 South Highland Avenue,
Los Angeles, California.
Tax Liability

Year	Corrected Tax Liability	Tax Previously Assessed	Deficiency
1927	\$14,006.55	\$4,386.60	\$9,619.95

The report of the Internal Revenue Agent in Charge at San Francisco, California, a copy of which has been furnished you, which explains in detail the determination of

(Testimony of Dan O'Hanlon.)

the deficiency has been reviewed and approved by this office.

Net income reported\$45,963.74

Add:

1. Additional income from business..... 45,963.74

\$91,927.48

Less:

2. Contributions allowed 400.00

Net income as adjusted.....\$91,527.48

Explanation of Adjustments

1. Gross income reported has been increased under Article 31, Regulations 69, \$45,927.48 which represents income from your business which was reported on Mrs. Kammerdiner's return since an investigation of your case discloses that no partnership books are kept showing the capital accounts, partnership agreement, or separate bank accounts. It is, therefore, held that your wife did not hold a vested interest in the partnership, and that the total income is taxable on a joint return.

2. Contributions in the amount indicated above have been allowed as a deduction from gross income under Article 251, Regulations 69.

Computation of Tax

Net income subject to surtax.....\$91,527.48

Less:

Dividends\$ 202.42

Personal exemption and credit

for dependents 4,700.00 4,902.42

Balance subject to normal tax..... \$86,625.06

Normal tax at 1½% on \$4,000.00.....\$ 60.00

Normal tax at 3% on \$4,000.00..... 120.00

Normal tax at 5% on \$78,625.06..... 3,931.25

Surtax on \$91,527.48..... 10,050.22

Total tax\$14,161.47

(Testimony of Dan O'Hanlon.)

Credit for earned net income.....	\$ 154.92
Total tax assessable.....	\$14,006.55
Tax previously assessed.....	4,386.60
Deficiency	<u>\$ 9,619.95</u>

Inasmuch as Item One is the only issue, and is now pending before the United States Board of Tax Appeals for the years 1925 and 1926, formal notice of deficiency is mailed you at this time without affording you an opportunity for a hearing before the Unit.

Payment should not be made until a bill is received from the Collector of Internal Revenue for your district, and remittance should then be made to him.

[Endorsed]: Filed Dec. 29, 1941.

Mr. Bloom: A letter from the Treasury Department, Internal Revenue Service, addressed to Mrs. Jas. Kammerdiner, dated May 15, 1930, being report for the year 1928.

The Court: It is received.

The Clerk: Plaintiff's Exhibit 17. [145]

(The document referred to was received in evidence and marked "Plaintiff's Exhibit No. 17.")

(Testimony of Dan O'Hanlon.)

PLAINTIFF'S EXHIBIT No. 17

Treasury Department
Internal Revenue Service
Los Angeles, California

Office of
Internal Revenue Agent in Charge

Mr. Jas. Kammerdiner
237 South Highland Avenue
Los Angeles, California

In re: Income Tax

Date of report: May 15, 1930

Year covered: 1928

Madam:

There is attached a statement of adjustments which this office proposed to recommend, affecting your income tax liability, and a form of agreement as to final determination of tax liability. If the adjustments suggested are satisfactory and you desire an immediate review and final determination, the agreement, Form 866, should be signed by you and forwarded to this office. Interest is payable on deficiencies found due as set forth on the attached Form 882.

If you do not agree with the conclusions set forth in the inclosed statement it is desired that every opportunity be afforded you to present to this office any objections or additional information. You are

(Testimony of Dan O'Hanlon.)

accordingly granted thirty days from date of this letter within which you may, if you so desire, protest the proposed adjustments. The protest and any additional statement of facts must be submitted to this office, executed in triplicate under oath, and should contain the following information:

(a) The name and address of the taxpayer (in the case of an individual the residence, and in the case of a corporation the principal office or place of business); (b) in the case of a corporation the name of the State of incorporation; (c) the designation by date and symbol of the letter advising of the proposed deficiency with respect to which the protest is made; (d) the designation of the year or years involved and a statement of the amount of tax in dispute for each year; (e) an itemized schedule of the findings to which the taxpayer takes exception; (f) a summary statement of the grounds upon which the taxpayer relies in connection with each exception; (g) in case the taxpayer desires a hearing, a statement to that effect; and (h) in case the protest is prepared or filed by an attorney or agent it shall have thereon a statement signed by such attorney or agent showing whether or not he prepared it and whether or not the attorney or agent knows of his own knowledge that the facts therein are true.

(Testimony of Dan O'Hanlon.)

If a protest is filed it will be given careful consideration in this office before the recommendations are forwarded to Washington for action. In the event that you do not protest within the thirty-day period, the case will be forwarded immediately thereafter to the Bureau at Washington for review.

In the event the recommendations are not approved upon review in Washington, you will be notified and given opportunity to discuss the changes with this office, or should you fail to protest to this office, any protest which you may subsequently file with Washington will be referred to this office for consideration.

If a deficiency is indicated no remittance should be made until you receive notice of assessment from the Collector of Internal Revenue for your district.

Please acknowledge receipt by return mail.

Respectfully,

ALF OFTEDAL,

Internal Revenue Agent in
Charge.

Inclosures:

Statement of adjustments

Forms 866 and 882

(Testimony of Dan O'Hanlon.)

Name—Mrs. Jas. Kammerdiner

237 South Highland Avenue

Los Angeles, California

Examining Officer:

W. D. Chandler

STATEMENT OF TOTAL TAX LIABILITY

Year	Tax Previously Assessed	Adjustments Proposed in Accompanying Report		Correct Tax Liability
		Deficiency	Overassessment	
1928	\$12,382.42	—	\$12,312.74	\$69.68
	_____	—	_____	_____
Totals	-----	---	-----	-----

Note

The amount shown in the first column of the above statement is the amount assessed on the original return except as indicated in the following summary of adjustments previously made:

(Followed by form not filled in.)

In re: Mrs. Jas. Kammerdiner.

Table of Contents

Preliminary Statement

Schedule 1 Block adjustments 1928

2 Earned income 1928

3 Computation of tax 1928

Preliminary Statement

The overassessment is occasioned by taxing to taxpayer's husband, J. Kammerdiner, the major portion of income returned by taxpayer as being received from partnership of Mr. and Mrs. J. Kammerdiner, which is held not to be a partnership.

The findings were discussed with taxpayer who does not agree to the adjustment and declines to sign agreement as to overassessment.

Taxpayer was married and living with her husband and three dependents at end of taxable year. Husband, J. Kammerdiner, filed separate return and claimed one half of personal exemption and credit for one dependent. In view of the fact that the major portion of the income has been transferred to return of husband he has also been given the entire personal exemption and credit for dependents.

(Testimony of Dan O'Hanlon.)

In re: Mrs. Jas. Kammerdiner.	Schedule 1 Block Adjustments		1928	
	Return	Additions to Income	Deductions from Income	Corrected
3. Interest.....		\$ 1,755.65✓		\$ 1,755.65✓
4. Partnership.....	\$84,254.30✓		\$84,254.30✓	
5. Rents.....		87.29✓		87.29✓
6. Sales.....		3,027.87✓		3,027.87✓
7. Dividends.....	154.30✓		.01	154.29✓
9. Other income.....		1,279.41✓		1,279.41✓
10. Total.....	<u>\$84,408.60✓</u>			<u>\$ 6,304.51✓</u>
12. Taxes.....			877.70✓	877.70✓
15. Contributions.....	<u>200.00✓</u>			<u>200.00✓</u>
17. Total.....	\$ 200.00✓			\$ 1,077.70✓
18. Net Income.....	\$84,208.60✓	\$ 6,150.22	\$85,132.01	\$ 5,226.81✓
			*Comput. OK	L.C.F.

*This line and check marks written in with pencil.

(Testimony of Dan O'Hanlon.)

Schedule 1-A

Explanation of Items

Item 3—Interest:

Reported	None
Corrected	\$ 1,755.65

Difference	\$ 1,755.65
------------------	-------------

See explanation in report on taxpayer's husband, J. Kammerdiner.

Item 4—Partnership:

Reported	\$84,254.30
Corrected	None

Difference	\$84,254.30
------------------	-------------

See explanation in report on taxpayer's husband, J. Kammerdiner.

Item 5—Rents:

Reported	None
Corrected	\$ 87.29

Difference	\$ 87.29
------------------	----------

See explanation in report on taxpayer's husband, J. Kammerdiner.

Item 6—Sales:

Reported	None
Corrected	\$ 3,027.87

Difference	\$ 3,027.87
------------------	-------------

See explanation in report on taxpayer's husband, J. Kammerdiner.

Item 9—Other Income:

Reported	None
Corrected	\$ 1,279.41

Difference	\$ 1,279.41
------------------	-------------

See explanation in report on taxpayer's husband, J. Kammerdiner.

(Testimony of Dan O'Hanlon.)

Item 12—Taxes:

Reported	None
Corrected	\$ 877.70

Difference	\$ 877.70
------------------	-----------

See explanation in report on taxpayer's husband, J.
Kammerdiner.

Schedule 2

Year ended 12-31-28

Computation of Earned Income Credit—

Income Tax

Earned net income.....	\$ 5,000.00
------------------------	-------------

Less personal exemption and credit for de- pendents	—
--	---

Balance	\$ 5,000.00
---------------	-------------

Normal tax at 1½% on \$4,000.00..	\$ 60.00✓
-----------------------------------	-----------

Normal tax at 3% on \$1,000.00..	30.00✓
----------------------------------	--------

Total tax	\$ 90.00✓
-----------------	-----------

Credit of 25%.....	\$ 22.50✓
--------------------	-----------

Schedule 3

Year ended 12-31-28

Computation of Income Tax

Net income (from Schedule 1).....	\$ 5,226.81✓
-----------------------------------	--------------

Less net loss	—
---------------------	---

capital net gain	—
------------------------	---

Income subject to surtax.....	\$ 5,226.81
-------------------------------	-------------

Less: Dividends	154.29✓
-----------------------	---------

Interest on Liberty Bonds, etc.	—
---	---

Personal exemption and credit for dependents.....	— 154.29
--	----------

Balance subject to normal tax.....	\$ 5,072.52✓
------------------------------------	--------------

Normal tax at 1½% on \$4,000.00	60.00✓
---------------------------------	--------

Normal tax at 3% on \$1,072.52	32.18✓
--------------------------------	--------

Total tax	\$ 92.18✓
-----------------	-----------

(Testimony of Dan O'Hanlon.)

Less: Credit of 25% for earned net income (from Sched- ule 2)	22.50	22.50√
Total tax assessable.....	\$ 69.68√	
Tax previously assessed.....	12,382.42√	

*Comput. OK L.C.F.

*This line and check marks written in with pencil.

[Endorsed]: Filed Dec. 29, 1941.

Mr. Bloom: A letter from the Treasury Department, Internal Revenue Service, addressed to J. Kammerdiner, dated May 15, 1930, being a report for the year 1928.

The Clerk: 18.

(The document referred to was received in evidence and marked "Plaintiff's Exhibit No. 18.")

(Testimony of Dan O'Hanlon.)

PLAINTIFF'S EXHIBIT No. 18

Treasury Department
Internal Revenue Service
Los Angeles, California

Office of
Internal Revenue Agent in Charge

James Kammerdiner
237 South Highland Avenue
Los Angeles, California

In re: Income Tax
Date of report: May 15 1930
Year covered: 1928

Sir:

There is attached a statement of adjustments which this office proposes to recommend, affecting your income tax liability, and a form of agreement as to final determination of tax liability. If the adjustments suggested are satisfactory and you desire an immediate review and final determination, the agreement, Form 866, should be signed by you and forwarded to this office. Interest is payable on deficiencies found due as set forth on the attached Form 882.

If you do not agree with the conclusions set forth in the inclosed statement it is desired that every opportunity be afforded you to present to this office any objections or additional information. You are accordingly granted thirty days from date of

(Testimony of Dan O'Hanlon.)

this letter within which you may, if you so desire, protest the proposed adjustments. The protest and any additional statement of facts must be submitted to this office, executed in triplicate under oath, and should contain the following information:

(a) The name and address of the taxpayer (in the case of an individual the residence, and in the case of a corporation the principal office or place of business); (b) in the case of a corporation the name of the State of incorporation; (c) the designation by date and symbol of the letter advising of the proposed deficiency with respect to which the protest is made; (d) the designation of the year or years involved and a statement of the amount of tax in dispute for each year; (e) an itemized schedule of the findings to which the taxpayer takes exception; (f) a summary statement of the grounds upon which the taxpayer relies in connection with each exception; (g) in case the taxpayer desires a hearing, a statement to that effect; and (h) in case the protest is prepared or filed by an attorney or agent it shall have thereon a statement signed by such attorney or agent showing whether or not he prepared it and whether or not the attorney or agent knows of his own knowledge that the facts therein are true.

If a protest is filed it will be given careful consideration in this office before the recommendations

(Testimony of Dan O'Hanlon.)

are forwarded to Washington for action. In the event that you do not protest within the thirty-day period, the case will be forwarded immediately thereafter to the Bureau at Washington for review.

In the event the recommendations are not approved upon review in Washington, you will be notified and given opportunity to discuss the changes with this office, or should you fail to protest to this office, *any protest which you may subsequently file with Washington will be referred to this office for consideration.*

If a deficiency is indicated no remittance should be made until you receive notice of assessment from the Collector of Internal Revenue for your district.

Please acknowledge receipt by return mail.

Respectfully,

ALF OFTEDAL,

Internal Revenue Agent in
Charge.

Inclosures:

Statement of adjustments

Forms 866 and 882

(Testimony of Dan O'Hanlon.)

Name—J. Kammerdiner

237 South Highland Avenue

Los Angeles, California

Examining Officer:

W. D. Chandler

STATEMENT OF TOTAL TAX LIABILITY

Year	Tax Previously Assessed	Adjustments Proposed in Accompanying Report		Correct Tax Liability
		Deficiency	Overassessment	
1928	\$12,543.70	\$19,716.33✓	—	\$32,260.03
Totals

Note

The amount shown in the first column of the above statement is the amount assessed on the original return except as indicated in the following summary of adjustments previously made:

(Followed by form not filled in.)

Table of Contents

Preliminary Statement

Schedule 1 Block Adjustment 1928

2 Earned Income 1928

3 Computation of Tax 1928

Preliminary Statement

The additional tax is occasioned by inclusion of income which had been returned by wife as partnership income.

The findings were discussed with taxpayer who does not agree to the adjustments and declines to sign agreement consenting to assessment.

Taxpayer was married, living with wife and had three dependents at end of taxable year. Wife filed separate return and claimed one half of personal exemption and credit for two dependents. In view of the fact that the major portion of the income returned by wife has been included in husband's return he has been allowed entire personal exemption and credit for dependents.

(Testimony of Dan O'Hanlon.)

In re J. Kammerdiner.	Schedule 1 Block Adjustments			1928
	Return	Additions to Income	Deductions from Income	Corrected
1. Salary.....	\$ 600.00			\$ 600.00
2. Business.....		\$160,349.15✓		160,349.15✓
3. Interest.....		1,755.66✓		1,755.66✓
4. Partnership.....	84,254.30✓		\$84,254.30✓	
5. Rents.....		87.30✓		87.30✓
6. Sales.....		3,027.87		3,027.87✓
7. Dividends.....	154.30✓			154.30✓
9. Other income.....		1,279.41✓		1,279.41✓
10. Total.....	<u>\$85,008.60</u>			<u>\$167,253.69✓</u>
12. Taxes.....			877.70✓	877.70✓
15. Contributions.....	200.00			200.00
17. Total.....	<u>\$ 200.00</u>			<u>\$ 1,077.70✓</u>
18. Net income.....	\$84,808.60	\$166,499.39	\$85,132.00	\$166,175.99✓
				*Comp. O.K.

*Comp. O.K.

*This line and check marks written in with pencil.

(Testimony of Dan O'Hanlon.)

Schedule 1-A

Explanation of Items

Item 2—Business:

Reported	None
Corrected	\$160,349.15

Difference	\$160,349.15
------------------	--------------

The income reported above was reported as partnership income on Form 1065 for Mr. and Mrs. J. Kammerdiner and there was also included in that return income from interest, rents, dividends and profit on sales of stock. Examining officer has segregated the income from operation of the "Rotary Jar" business, which is considered as income to husband, from that which was derived from jointly owned property and shows same above as income of husband. Income from jointly owned property is allocated between husband and wife on a fifty fifty basis.

Income from the "Rotary Jar" business is shown in the following schedule.

Schedule 1-B

Explanation of Items

Income from rental of "Rotary Jars"	\$127,120.17✓
Income from sale of "Rotary Jars"	115,159.00✓
Income from Mid-Continent rentals	1,162.50✓
Income from San Joaquin rentals	3,790.54✓
Income from Wyoming and Montana rentals	706.92✓
Income from Assemblies rentals	1,598.00✓

Total income	\$249,537.13✓
--------------------	---------------

Deductions:

Expense of manufacturing and repairs	\$ 65,189.62✓
General expense, advertising, etc.	4,588.03✓
Commissions	16,475.00✓
Automobile expense	1,011.17✓
Automobile depreciation	1,166.66✓
Loss on sale of automobile	757.50✓

Gain from "Rotary Jar" business	
---------------------------------------	--

	\$160,349.15✓
--	---------------

(Testimony of Dan O'Hanlon.)

The entire income from the "Rotary Jar" business is held to be income of J. Kammerdiner in view of the fact that no partnership exists. See report under even date on alleged partnership of Mr. and Mrs. J. Kammerdiner.

Schedule 1-C

Explanation of Items

In arriving at the above income the following adjustments have been made:

Amount shown on Line 3, Form 1065....	\$158,286.97
Plus capital item charged to expense.....	2,385.60✓
	<hr/>
	\$161,672.57✓
Less income from ranch at Olive.....	1,323.42
	<hr/>
	\$160,349.15✓

Disallowance of capital expenditure is explained as follows. Taxpayer developed and patented a "Rotary Jar" in 1923. In 1928 he purchased the Scanlon patent for which he paid \$2,520.00. Taxpayer states that his sole reason for purchasing this patent was to protect his own original patent and that the patent which he purchased is of no value to him aside from the protection which he sought. In view of the fact that taxpayer states that the patent was purchased for the purpose of preventing its development along lines which might result in the manufacture of a tool adapted to produce results similar to those produced by taxpayer's patented tool, it is believed that depreciation should be allowed on the basis of the remaining life of the original patent rather than on the life of the patent which was purchased. Depreciation is, therefore, computed on that basis.

The original patent was issued in October 1923 and in May 1928, at which time the Scanlon patent was purchased, had a remaining life of twelve and one half years. Therefore, the annual depreciation allowable would be

\$2,520.00 divided by 12.5 equals \$201.60, and as the patent was purchased in May 1928 the amount allowable for that year would be two thirds of \$201.60 or \$134.40.

(Testimony of Dan O'Hanlon.)

The full cost of the patent, \$2,520.00 was charged to general expense and examining officer has added to income \$2,385.40, which is the difference between the cost and the allowable depreciation.

The books and accounts kept for the alleged partnership are on the cash receipt and disbursement basis. Taxpayer does no manufacturing of his tool but hired them made and the entire cost is used as an expense item. No inventories are made and no capital accounts are kept. A considerable number of the tools, "Rotary Jars" are owned by taxpayer and are in use on a rental basis in the United States, while those in use in foreign countries are sold outright.

Schedule 1-E

Explanation of Items

Income from ranch at Olive is the joint income of husband and wife and has, therefore, been excluded from income from business and allocated on a fifty fifty basis in Item 9 of their separate returns.

[Pencil Notation]:

661.71—

617.70

Schedule 1-F

Item 3—Interest:

Reported	\$ None
Corrected	1,755.66
	<hr/>
Difference	\$ 1,755.66

Income from interest reported on Line 5 of Form 1065 was derived from jointly owned property of husband and wife and has, therefore, been allocated on a fifty fifty basis in their separate returns.

Item 4—Partnership:

Reported	\$84,254.30
Corrected	None
	<hr/>
Difference	\$84,254.30

See explanation in Item 2.

(Testimony of Dan O'Hanlon.)

Schedule 1-G
Explanation of Items

Item 5—Rents:

Reported	None
Corrected	\$ 87.30
<hr/>	
Difference	\$ 87.30

Income from rents reported on Line 7 of Form 1065 was derived from property owned jointly by husband and wife and has, therefore, been allocated to them on a fifty fifty basis in their separate returns.

Item 6—Sales:

Reported	None
Corrected	\$ 3,027.87
<hr/>	
Difference	\$ 3,027.87

The gain from sales reported on Line 9 of Form 1065 was derived from property owned jointly by husband and wife and has, therefore, been allocated to them on a fifty fifty basis in their separate returns.

Schedule 1-H
Explanation of Items

Item 7—Dividends.

No change has been made in this item. It was included on Line 10 of Form 1065, and properly allocated on a fifty fifty basis in separate returns of husband and wife.

Item 9—Other Income:

Reported	None
Corrected	\$ 1,279.41
<hr/>	
Difference	\$ 1,279.41

Income from ranch at Olive, which was included in Line 3 of Form 1065 and income from joint account which was included in Line 4 of Form 1065 was derived from property owned jointly by husband and wife and has, therefore, been allocated on a fifty fifty basis in their separate returns.

(Testimony of Dan O'Hanlon.)

Schedule 1-I

Item 10—Taxes:

Reported	None
Corrected	\$ 877.70
Difference	\$ 877.00

The item of taxes on Line 17 of Form 1065 was paid in connection with property owned jointly by husband and wife and therefore is allocated on a fifty fifty basis in their separate returns.

Schedule 2

Year ended 12-31-28

Computation of Earned Income Credit—

Income Tax

Earned net income.....	\$30,000.00
Less personal exemption and credit for de- pendents	4,700.00✓
Balance	\$25,300.00✓

Normal tax at 1½% on \$4,000.00....	\$ 60.00✓
Normal tax at 3% on \$4,000.00....	120.00✓
Normal tax at 5% on \$17,300.00....	865.00✓
Surtax on \$30,000.00.....	880.00✓
Total tax	\$ 1,925.00✓
Credit of 25%.....	\$ 481.25✓

Taxpayer is entitled to maximum earned income of \$30,000.00.

Schedule 3

Year ended 12-31-28

Computation of Tax—

Income Tax

Net income (from Schedule 1)	\$166,175.99✓
Less: Net loss	—
Capital net gain.....	—
Income subject to surtax.....	\$166,175.99

(Testimony of Dan O'Hanlon.)

Less: Dividends	\$ 154.30✓	
Personal exemption and credit for dependents....	4,700.00✓	
Interest on Liberty bonds, etc.	—	
	<hr/>	4,854.30✓
Balance subject to normal tax		\$161,321.69✓
Normal tax at 1½% on \$4,000.00..	\$ 60.00✓	
Normal tax at 3% on \$4,000.00..	120.00✓	
Normal tax at 5% on \$153,321.69	7,666.08✓	
Surtax on \$166,175.99.....	24,895.20✓	32,741.28✓
	<hr/>	
Total tax	\$ 32,741.28✓	
Less: Credit of 25% for earned net income (from Sched- ule 2)	481.25	
Income tax paid at source	—	
Taxes paid to a foreign country	—	
	<hr/>	481.25✓
Total tax assessable.....		32,260.03✓
Tax previously assessed.....		12,543.70✓
		<hr/>
Additional tax to be assessed.....		\$19,716.33✓

*Comput. OK L.C.F.

*This line and check marks written in with pencil.

[Endorsed]: Filed Dec. 29, 1941.

Mr. Bloom: That is all, Mr. O'Hanlon.

JAMES KAMMERDINER

called as a witness by and on behalf of the Government under Rule 43, having been previously duly sworn, testified as follows:

Direct Examination

By Mr. Mitchell:

Q. Mr. Kammerdiner, will you state of what your wife's activities consisted with respect of obtaining your original [146] basic patent.

The Court: Does the Government intend to show on cross examination that she helped to invent it?

Mr. Mitchell: No, your Honor. She helped perfect it and some of her funds went into the procurement of the patent, some of her own and separate funds and she had more to do with the procurement of the patent than the plaintiff himself.

The Court: All right. Go ahead.

The Witness: I was very busy out in the field and she found someone she had quite a bit of confidence in to select a patent attorney. I went up there and instructed the patent attorney what to apply for. She had nothing to do with that other than select the attorney, which I think was a very good one.

By Mr. Mitchell:

Q. And the fees that were paid to the Patent Office, and the fees that were paid to the patent attorney came from what source? From your joint bank accounts? A. Yes, sir. [147]

(Testimony of James Kammerdiner.)

The Court: Everything, as a matter of fact, from the time you began accumulating money to the time of her death came from these various accounts?

The Witness: Yes.

The Court: There wasn't any "mine and thine," it was "ours" all the time, wasn't it?

The Witness: That is the way it was, yes, every moment of it.

The Court: If you borrowed the money from the bank for your business, why, whether you signed the note or she signed with you, why, you paid it out of the income you received from the patents, from your oil wells, and from your real estate?

The Witness: Yes.

The Court: Or from whatever source?

The Witness: Yes.

The Court: All right. In view of that, I don't think you need to go into any particularization very much.

By Mr. Mitchell:

Q. Mr. Kammerdiner, you did feel it was necessary to protect your basic patent by purchasing other similar patents, did you not; those which you purchased, I mean?

Mr. Bloom: Objected to as incompetent, irrelevant and immaterial.

The Court: Overruled.

The Witness: Yes, I should say it was, yes.

(Testimony of James Kammerdiner.)

By Mr. Mitchell:

Q. If you hadn't your basic patent, you would have had competitors that would have reduced the amount of your income; isn't that true?

A. It is possible. It wasn't——

The Court: They might have had a nuisance value. Sometimes you buy up a lawsuit for nuisance value and sometimes you buy a patent because somebody might say you are infringing. And if you make an improvement and it is successful, somebody who never has had anything but a paper patent, may come up years afterward and try to divide the profits.

By Mr. Mitchell:

Q. Would you say at the time of your wife's death the value of all of the patent rights, then owned, was greater than they would have been had you not purchased these protective patents?

A. I don't think I have a patent that is worth hauling home.

Q. Not worth what you paid for it?

A. I don't think there is one outside of the original one that is really a patent, no, sir.

Q. But nevertheless you did purchase them to protect the basic patent?

A. Yes. I would try to buy one tomorrow if necessary.

The Court: It is cheaper than a lawsuit, isn't it?

The Witness: Yes, much better. I got in one

(Testimony of James Kammerdiner.)

lawsuit [149] that cost me \$125,000.00 trying to stop one infringer.

The Court: All right.

Mr. Mitchell: If your Honor please, I intend to read considerable of the transcript into the record from the Board of Tax Appeals case.

Mr. Smith: Is there any way we could shorten this, if your Honor please?

The Court: I don't know what is in the record. The [150] only way would be to have it received without objection and then I will feel safe.

Mr. Smith: I am just wondering——

The Court: I have been at this judging for 15 years, gentlemen, and the most dangerous thing to do is to accept an entire record from another case because you are burdening yourself with a lot of testimony as to which you are entirely in the dark. You gentlemen are familiar with the procedure there. If you will offer no objection then I will take it and then you can pick out things you want and each of you can point those out in your argument, the portions that you think are material, but unless you do that I won't take it; it is too dangerous. [151]

Mr. Smith: He is putting it in on the question of estoppel and it is our objection that it does not prove any of the issues that he has.

Mr. Mitchell: That is not the only purpose, your Honor. The chief purpose is the declarations

against interest and admission by the plaintiff. [152]

Mr. Mitchell: The only issue that was decided was the question whether or not there was a partnership.

The Court: Do you want to offer it limited to the question of any admissions as to the partnership basis?

Mr. Mitchell: And the ownership of the property and the details.

The Court: And not to any question of estoppel?

Mr. Mitchell: Estoppel, so far as the second defense is concerned, no, not misrepresentations or representations to the Commissioner that the Government relied upon to its detriment, no, not that form of estoppel.

The only decision of which the Court will take judicial knowledge covers the third defense, which is an adjudication upon admissions of fact between the parties under a different cause of action is conclusive. That is the third point.

The Court: That is not estoppel, that is res judicata.

Mr. Mitchell: It is res judicata or a bar of some type. The point in the third defense is that the decision of the [154] Board upon questions of fact in an action between the same parties in another action is conclusive.

The Court: Res judicata arises from the judg-

ment of the Court in the light of the issues raised by the pleadings, not by the evidence given.

Mr. Mitchell: That is true.

The Court: All right. This is offered as merely having bearing upon the ownership of the property as testified to before the Board by the parties interested in that particular proceeding.

Mr. Mitchell: Consisting of admissions and declarations against interest whatever they are. How about that?

Mr. Smith: We will withdraw our objection.

The Court: And it may be received for that purpose. The whole thing may be received and either side is at liberty to call the Court's attention to any portion of the transcript in their briefs.

It is now received in evidence but it will retain its same number.

The Clerk: Defendant's Exhibit 16.

(Defendant's Exhibit 16 previously marked for identification was received in evidence.)

[155]

DEFENDANT'S EXHIBIT No. 16

Official Report of Proceedings
Before the
U. S. Board of Tax Appeals
Docket No. 41643 and 46555

J. KAMMERDINER, et al.,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Hearing at Los Angeles, Calif.
June 10, 1931.

Appearances:

John B. Milliken, Esq., and
George H. Proctor, Esq.,
on behalf of the Petitioners.

Philip M. Clark, Esq., (Clarence M. Charest,
Esq., General Counsel, Bureau of In-
ternal Revenue), on behalf of the Com-
missioner of Internal Revenue, Respond-
ent.

PROCEEDINGS

The Clerk: Appeals of J. Kammerdiner, Docket
41,643, and J. A. Kammerdiner, Docket 46,555.

Mr. Milliken: The petitioners are ready.

The Member: Mr. Clark will be here in a min-
ute or two, I guess. We will call the other cases
on the calendar for today.

Defendant's Exhibit No. 16—(Continued)

(Thereupon the Member proceeded to the transaction of other business and at 10:20 o'clock the hearing was resumed as follows:)

The Clerk: Appeals of J. Kammerdiner, Docket 41,643, and J. A. Kammerdiner, Docket 46,555.

The Member: The petitioner is represented by J. B. Milliken, and the respondent by Mr. Clark.

Mr. Milliken, make your opening statement.

STATEMENT OF CASE FOR PETITIONER

Mr. Milliken: This case, having two docket numbers, involves deficiencies for three years, 1925, 1926 and 1927. One issue is common to all three years, namely, whether or not there was a partnership existing between Mr. and Mrs. Kammerdiner for each of the years.

As I understand it, their income is not in dispute, and if they be not a partnership, their deficiency is correctly computed. But, if there be a partnership, then we claim that the returns should stand as they were made, by each of them reporting one-half each of the income of the partnership.

The evidence will show that practically the entire income derived by Mr. and Mrs. Kammerdiner during the three years in question was derived from the profits received from a patent known as a rotary jar patent, and that is practically the entire source of income through all of the years.

I feel that it is such a simple question, and one which the Board has dealt with so often—in fact, I

Defendant's Exhibit No. 16—(Continued)

just made a spot check through the volumes of the Board of Tax Appeals from 1 to 22, inclusive, and I find there is an average of two partnership cases in every volume, between husband and wife. It is a question, after all, that it seems to me should be decided, if your Honor is so inclined here this morning, as to whether this is or is not a partnership between them. The facts, I think, will be clear, and the law certainly is clear, and certainly the decisions of the Board are almost legion on the question.

EVIDENCE FOR PETITIONERS.

Thereupon, the petitioners, to maintain the material averments of their petitions, introduced the following evidence, to-wit:

Mr. Milliken: Call Mr. Kammerdiner.

Thereupon——

J. A. KAMMERDINER

was called as a witness by and on behalf of the petitioners, and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Milliken:

Q. How long have you been a resident of California? A. Thirty years.

Q. What has been your occupation during those thirty years, if it has been continuous?

A. The oil business.

Defendant's Exhibit No. 16—(Continued)
(Testimony of J. A. Kammerdiner.)

Q. The oil business? A. Yes, exclusively.

Q. In what phase of the oil business are you interested, or have you been employed in?

Q. For whom did you work in the early stages of your employment, for yourself, or for others?

A. For others.

Q. Who were the others that you worked for?

A. The Standard Oil Company, the Union Oil Company, and the Associated Oil Company, the three big companies.

Q. Are they, or are they not, three of the representative oil companies on the Pacific Coast and in Southern California? A. Yes.

Q. When were you married?

Q. Are you still living together as husband and wife? A. Yes, sir.

Q. And have you been continuously since the date of your marriage? A. Yes.

Q. Had your wife been engaged in any occupation, prior to your marriage to her, to your knowledge? A. Yes, sir.

Q. What occupation had she been engaged in?

A. Office work.

Q. Office work?

A. Yes, in a brokerage firm.

Q. Office work and with a brokerage firm?

A. Yes.

Q. Subsequent to your marriage, as I understand it, you continued on in the oil business, the oil drilling work? A. Yes, sir.

Defendant's Exhibit No. 16—(Continued)
(Testimony of J. A. Kammerdiner.)

Q. Did your wife render any service with respect to your employment during this period?

A. Yes, sir.

Q. What service did she render?

A. Shortly after we were married, I was superintendent of the Associated Oil Company's property at Le Brea. In connection with my work they gave me on the set out there between my wife and I, we were to take care of the boarding house while we were drilling the oil well. My wife took it and I believe held it for six years, which was quite a job for those days.

Q. Do your knowledge, did your wife run the boarding house at a profit, from a financial standpoint to her?

A. Yes.

Q. Did she save any money as the result of it, to your knowledge?

A. Yes.

Q. Without being exact—and I assume that no husband is exact as to what his wife's savings are—do you know, in a general way, what she did save? Was it a few hundred dollars?

A. Several thousand dollars.

Q. Several thousand dollars?

A. Yes.

Q. Were you the inventor of what is known as the rotary jar patent?

A. Yes, sir.

Q. Would you explain just briefly what you sought to accomplish by your invention, this patent, and what it does accomplish? I don't want you to go into a lot of details, but just tell, if you can, briefly.

Defendant's Exhibit No. 16—(Continued)
(Testimony of J. A. Kammerdiner.)

A. Well, while I was working with one of these companies, there was a time I had eighteen rigs—that means eighteen wells—to take care of at one time, and one morning there were nine out and eight that were fishing?

Q. What do you mean by fishing?

A. They had lost parts of the drill pipe, the drill bits, and so on, in the hole.

I did not do any advertising at that time, except just around in the field we did advertise, and in a very short time I had ten or twelve jobs a day.

Q. I think you have explained in a general way what your device sought to accomplish and did accomplish. Had you accumulated any property—I am speaking about at the time, now, prior to the securing of the patent on that invention?

A. A small amount, a very small amount.

Q. Would you say that your wife and your accumulations was about equal?

A. About equal, yes.

Q. When did you apply for the patent on this device? A. October 22, 1922.

Q. How long was it after the application was filed until the patent was granted by the United States Patent Office?

A. One year.

Q. About one year?

A. Yes, twelve months.

Q. When did you begin manufacture, if you did begin it, prior to the actual granting of the patent of this device?

Defendant's Exhibit No. 16—(Continued)

(Testimony of J. A. Kammerdiner.)

A. April, I believe, of 1923.

Q. April of 1923? A. Yes, sir.

Q. Did you and your wife have any understanding; and if so, what was it, in April, 1923, or at any time in 1923, with respect to the marketing and sale and ownership of this patent?

A. We did. Immediately after the first trying of the first tool, it was decided that I would take the tool in the field, and she would do the office work, and if we made any money we would divide it; and if we lost any money, we would stand the losses.

Q. On what basis were you to divide the profits and share the losses?

A. Well, fifty-fifty, the best we could agree in a case of that kind.

Q. All right, you agreed then, did you, that she would get one-half, if you made any gains?

A. Yes, sir.

Q. And she would share one-half of the losses, if you suffered any losses? A. Yes, sir.

Q. Did you, or did you not, agree, that the other property, as well as the property of your wife, should be used incident to the manufacture and sale of these patented articles?

A. Yes, sir.

Q. Who was responsible for insisting that you obtain a patent with respect to this device?

A. My wife.

Q. Why did she insist upon that, if you know, or did she state to you?

Defendant's Exhibit No. 16—(Continued)
(Testimony of J. A. Kammerdiner.)

A. Well, I don't know that she gave any particular reason, but she insisted very strongly that I should make application for the patent. I was quite busy.

Q. Who secured the lawyer, the patent lawyer, with respect to the application for the patent?

A. My wife did.

Q. Who made the investigations, if anyone, with respect to the ability of a good patent attorney who would protect your interest in this matter?

A. My wife.

Q. Did you turn all of these matters over to her incident to the securing of the patent, and getting the patent attorney

A. Well, I would not say that, no, sir; she took that part on her own initiative, and located the lawyer.

Q. Now, you have stated that in April of 1923 you and your wife had this agreement or understanding. Did you, or did you not, agree with each other as to what services you were to perform, and what services she was to perform?

A. We did, yes, sir.

Q. And what did you agree that each of you should do?

A. That I should do the field work and my wife was to line up the office work.

Q. And what do you mean by that, that you were to do the field work?

A. These drills—at that time, no one in the

Defendant's Exhibit No. 16—(Continued)

(Testimony of J. A. Kammerdiner.)

country knew how to run them; did not know what they were for. I took it to—I took this tool to what I figured was the best oil man in the country and was going to give him a half interest in it. Really, before I made that application for patent, I figured he would put up the money and we could do it, but he turned it down, saying it was too complicated; that it would not work out; and in that way, I needed a partner, and my wife was the partner from then on.

Q. Mr. Kammerdiner, did you go out in the field and perform the service which you agreed to perform? A. Yes.

Q. Did your wife attend to the office and the business end of it, as she agreed to do?

A. She did, yes, sir.

Q. Now, explain what service your wife performed incident to attending to the business end of it. Explain what you mean by that and what she did, of your own knowledge.

A. We did what we figured was a very nice business, in time. I never made out a bill, I never collected a dollar, and never kept the books in any way. My wife did all that all the way up the line.

Q. Was an office maintained at any place?

A. In our home.

Q. Who was in charge of that office?

A. My wife.

Q. Did your wife have domestic help in the home prior to April, 1923? A. No, sir.

Defendant's Exhibit No. 16—(Continued)
(Testimony of J. A. Kammerdiner.)

Q. Was domestic help employed in the home after the partnership was entered into?

A. Yes, sir.

Q. For what reason did you employ domestic help?

A. Well, it gave her more time to take care of the business. That was bringing in money, and it gave her—it took a good part of her time, taking care of the essential things in charge of the business.

Q. If orders were received—were orders received during the years 1925, 1926 and 1927 for rotary jars?

A. Yes, sir.

Q. Who received those orders?

A. My wife mostly; occasionally, I would catch one of them.

Q. Did you manufacture the jars yourself?

A. No, sir.

Q. How did you cause them to be manufactured?

A. Through shop work.

Q. Who arranged the details of the manufacture—of the contract with respect to the shop work?

A. I believe I did that, after I consulted my wife on those matters, and comparing notes of the shops that we had been doing—that she had lined up. She had lined up shops that we were figuring were going to do our work cheaper, or a little cheaper than the one we had before.

Q. Did your wife pass upon all contracts with

Defendant's Exhibit No. 16—(Continued)

(Testimony of J. A. Kammerdiner.)

respect to the manufacture of these patented articles by others? A. Yes, sir.

Q. Would she give orders to others?

A. Yes, sir.

Q. To other manufacturers with respect to their bills? A. Yes, sir.

Q. Did she pass upon the sufficiency or insufficiency of the bills? A. Yes, sir.

Q. Did your wife devote herself continuously to the business end of this business?

A. Continuously, yes, sir. I would say with the exception of occasionally two weeks, of which we would take a vacation to the mountains, or some other time,—outside of that, continuously, her time was taken for the business.

Q. What books were kept, if any, for this business or this partnership?

A. My wife kept the books.

Q. Your wife kept all of the books?

A. All of them, yes, sir.

Q. I show you three books that are labelled the years 1925, 1926 and 1927, and will ask you if you have seen these books heretofore?

A. Yes, sir.

Q. In whose handwriting are the books?

A. My wife's.

Q. Did you ever make an entry in these books?

A. Not one, no, sir.

Q. Did you ever collect a bill?

A. Not one.

Defendant's Exhibit No. 16—(Continued)
(Testimony of J. A. Kammerdiner.)

Q. Did you ever bill out a client?

A. No, sir.

Q. Who did that? A. My wife.

Q. What did you do with—who made the collections? A. My wife.

Q. What did she do with the money that she collected?

A. She put it in the joint account in the bank.

Q. Well, how was that account kept; in whose names was it?

A. James Kammerdiner and Mrs. James Kammerdiner.

Q. Did each have a right to draw against that bank account? A. Yes.

Q. Were all the funds derived from this patented article, deposited in those bank accounts?

A. Yes.

Q. Did you wife have an unrestricted right to draw on that bank account?

A. She did, yes.

Q. Did she exercise such right?

A. I believe so.

Q. You believe so? A. Yes, sir.

Q. You don't know whether she did or not?

A. Exercise——

Q. Did she exercise her right to draw on that account when she wanted to? A. Yes, sir.

Q. You state that she did? A. Yes, sir.

Q. Do you? A. Yes, sir.

Defendant's Exhibit No. 16—(Continued)

(Testimony of J. A. Kammerdiner.)

Q. Did your wife make any investments from that account, of her own accord? A. Yes, sir.

Q. Without consulting with you?

A. Of any great importance, in the jar business, it was consulted between us.

Q. I am talking about now, for any investments that she had, apart from the jar business?

A. She would make investments without consulting me, if she could.

Q. Did you? A. Yes, sir.

Q. But is it, or is it not, a fact, that afterwards each of you discussed what had been done?

A. Yes, sir.

Q. Employees were hired, persons were hired, in the business—did you consult with your wife with respect to it? A. Yes, sir.

Q. Did she pass upon such matters of employment and employees? A. Yes, sir.

Q. Did occasion ever arise when Mrs. Kammerdiner exercised her rights with respect to the funds in this bank account, and either determined what should be done or what should not be done?

A. Yes, sir.

Q. Did your wife pass upon, or did she not pass upon, all matters with respect to the rotary jar business, either as to the expansion of the trade, who should manufacture the articles, to whom they should be sold and so on?

A. Yes, she passed on all of it.

Q. Did she, or did she not, pass upon the credits

Defendant's Exhibit No. 16—(Continued)
(Testimony of J. A. Kammerdiner.)

of the persons who were going to purchase on time these jars? A. Yes, sir.

Q. Did you have both domestic as well as foreign business in these jars? A. Yes, sir.

Q. What was done with respect to the foreign business in the jars?

A. The California National had the exclusive foreign shipping.

Q. Did you devote yourself incident to the details of that foreign business? A. No, sir.

Q. I mean the collection of the accounts, and where they should go, and whether they were good accounts, or not, is what I mean?

A. Well, the California National—that is generally carried on by the National, and they were generally considered good; but for the rentals, I very seldom had a chance to pass on them.

Q. Who did?

A. My wife; but the National—that account was ten days cash.

Q. Did you and Mrs. Kammerdiner have occasion to employ anyone to assist you in the preparation of your income tax returns for any of the previous years 1925, 1926 or 1927, or prior years?

A. Yes, sir.

Q. Who did you employ or get to assist you in this matter?

A. A gentleman by the name of O'Hanlon at Fullerton—Dan O'Hanlon.

Q. What business was he in?

Defendant's Exhibit No. 16—(Continued)
(Testimony of J. A. Kammerdiner.)

A. Insurance and real estate business.

Q. And you had a controversy with the Government with respect to the acceptance of the partnership returns on behalf of you and your wife for the years 1925, 1926 and 1927? A. Yes, sir.

Q. What was the agreement which you entered into in April, 1923—was it reduced to writing in April, 1923? A. No, it wasn't.

Q. Have you ever reduced it to writing with respect to the partnership arrangement?

A. We have, in 1928, I believe—August, 1928.

Q. You did in 1928? A. Yes, sir.

Q. Why did you reduce it to writing then?

A. Well, they claimed——

Q. Who claimed?

A. Through our—through the gentleman that took out—that made out our report at Fullerton, gave us the impression that——

Mr. Clark: Now, your Honor, I do not think it makes any difference what impression was conveyed. This was reduced to writing in 1928 for some reason, and it had not been reduced to writing prior to that time. What I want to defeat is having any statement go into the record as a communication between the agents of the Government, the income tax bureau, and the petitioner, because these communications do not belong there.

Mr. Milliken: Well, if Mr. Clark will introduce with me the letters for the years 1925, 1926 and

Defendant's Exhibit No. 16—(Continued)
(Testimony of J. A. Kammerdiner.)

1927 which were sent to this man telling him that they would not recognize the partnership unless it was in writing, then I will get into 1928, and show they did recognize it then, because they put something in writing. That is all I want to do.

Q. You did, however, execute the agreement in 1928, that was in writing, with respect to the partnership? A. Yes.

Q. Did that change, in any wise, the manner in which you had conducted your business theretofore?

A. Not in the least.

Q. Did it change in any wise the division of the profits and the sharing of the losses between you and your wife, that you have testified about heretofore? A. No, sir.

The Member: Well, I take it that the situation is something like this: The taxpayer, as to this written agreement, partnership agreement, is contending that it was simply a reduction to writing of the oral agreement that was entered into in 1923, or whenever it was.

By Mr. Milliken:

Q. That was right, wasn't it, Mr. Kammerdiner?

A. Yes.

The Member: And I take it the Government's position is that, the very fact that the written agreement was entered into in 1928, is to be regarded as evidence or an indication anyway, that there was no partnership prior to that date.

The Member: It seems to me that the thing for

Defendant's Exhibit No. 16—(Continued)

(Testimony of J. A. Kammerdiner.)

you to do here—you have shown by this witness—this witness testified that he entered into an oral partnership agreement with his wife in 1923. Now, obviously, a partnership agreement, a written agreement, entered into in 1928, would not be material to the issue here, unless it be shown that it is merely a reduction to writing of an oral agreement that was entered into in 1923; and if you show that, it does not look to me like there is any difference what the reason for it was, who told you to do it, or anything of that kind.

Mr. Milliken: I did not want to get into a situation like this with Mr. or Mrs. Kammerdiner, or have your Honor get the impression that this husband and wife may have gone along and suddenly changed over, or something like that, and they are changing front about this matter, that is, their absolute good faith throughout.

The Member: What you are undertaking to do and what you must do to sustain your position, to prove that the partnership was effective by the oral agreement in 1923—

Mr. Milliken: The witness has so testified.

The Member: And that thereafter, they were in business, and in 1928, when the partnership agreement was effected, it was nothing more than a reduction to writing of the original oral agreement. That is what the Government disputes, I presume.

Mr. Milliken: Well, it is a reduction to writing of the partnership agreement in 1928.

Defendant's Exhibit No. 16—(Continued)
(Testimony of J. A. Kammerdiner.)

By Mr. Milliken:

Q. Was it a reduction to writing of the understanding or agreement that had theretofore existed since April, 1923?

A. That was our intention, yes.

Q. I believe you testified that it did not change your manner of operations or anything one iota?

A. No, sir.

Cross Examination

By Mr. Clark:

Q. The manufacture of this patented article was begun in April, 1923, do I understand, Mr. Kammerdiner? A. Yes.

Q. Prior to that time had you manufactured any article of this sort? A. No, sir.

Q. Or this general character? A. No, sir.

Q. When was this patent obtained? I believe you stated you operated—you applied for it in January, 1922?

¹ A. No, sir, October 22, 1922, I believe.

Q. Have you that letter of patent, or those letters patent, I am not just sure which is the proper way to refer to them.

A. I have those, but not with me.

Q. To whom was the patent issued?

A. James Allen Kammerdiner.

Q. That is your name? A. Yes, sir.

Q. Where was it that you kept the bank account which you have referred to, the bank account

Defendant's Exhibit No. 16—(Continued)

(Testimony of J. A. Kammerdiner.)

through which the operations of this manufacturing business were conducted?

A. We always had a bank account, a small bank account.

Q. I was asking you where it was kept, I mean in what bank?

A. The Citizens and the Security. We have two banks, and the Farmers and Merchants, at Fullerton, three banks.

Q. In whose name was the account?

A. James Kammerdiner and Myrtle B. Kammerdiner,—or set out as James Kammerdiner or Mrs. Kammerdiner. I believe it is on the book that way.

Q. Either or both of you drew checks on the account? A. Yes, sir.

Q. I believe you have stated there was no restriction on Mrs. Kammerdiner's drawing?

A. No, sir.

Q. Did you draw without restriction also?

A. Yes, sir.

Q. Now, Mrs. Kammerdiner, as I understand it, looked after all of the details of this manufacturing business?

A. As far as the office work would be concerned, she did.

Q. Well, now, what would be the division between the office work, so-called, and your work, which I believe you referred to as outside work?

A. Well, the outside work—I would be gone

Defendant's Exhibit No. 16—(Continued)
(Testimony of J. A. Kammerdiner.)

sometimes for two or three or four days, never get home——

Q. Do I understand that you manufactured this equipment for this oil drilling, and did you attend to the installations?

A. Yes, the rental business—these are not sold; they are all rentals.

Q. You retain title and rent them?

A. Yes, sir.

Q. Do you have patents in other countries?

A. Yes, sir.

Q. In whose name do those patents stand?

A. The same, James Allen Kammerdiner.

Q. In what country do you have patents?

A. Great Britain and the Irish Free State, I believe are the only foreign countries.

Q. How long have you had those patents?

A. Ever since they were allowed in the United States, ever since they were patented in the United States.

Q. And those tools, do I understand, are sold by you in countries other than the United States?

A. Yes, sir.

Q. You made some reference to employees; how many employees did you have during the years that are involved in this petition? A. Two.

Q. Did I understand you to state that Mrs. Kammerdiner passed on the credit of those who obtained the use of these tools from you?

Defendant's Exhibit No. 16—(Continued)
(Testimony of J. A. Kammerdiner.)

A. If it was pressing, she did it. I was not familiar with it.

Q. You made no investigation relative to the financial

Q. Were there any losses during these years? When I say were there any losses I mean—I will try to make myself clear. You have stated there was an agreement between you two that you would share the profits, and there was an agreement that you would share the losses also; were there any losses?

A. I don't believe there was any losses. And if there were, they were of no great amount, and our return showed a profit.

Q. Did Mrs. Kammerdiner place any capital in the enterprise, at the time, did she furnish any money?

A. I don't believe that she furnished any money, although she did have an account, a savings account, even before I made application for the patent.

Q. She had a savings account for sometime, didn't she? A. Yes, sir.

Q. Before that? A. Yes, sir.

Q. But did she withdraw any funds that were employed in the manufacture and exploitation and use of these tools?

A. I wouldn't say that she did, no, sir.

Q. Where did you obtain the funds that were necessary for manufacturing?

A. The checking account. I gave a check for—

Defendant's Exhibit No. 16—(Continued)
(Testimony of J. A. Kammerdiner.)

Q. Where did you get the funds in the first instance when you first started?

A. They were derived from working for the Union Oil Company and the Standard and the Associated. We always saved a little along the line. I wouldn't say which account it came from, or which company it came from.

Q. But it was money which you had acquired, wasn't it, through your activities?

A. Had been acquired——

Q. I am speaking now of the time up until April, 1923. A. How?

Q. I am speaking of the time prior to April, 1923, she had earned some money up to that time?

A. Yes.

Q. Perhaps I am confused. I thought you just stated that you couldn't say that she had ever put any money into the project of manufacturing these tools. A. She had.

Q. Then you want to change your testimony?

A. I stated before that she had made some money, I didn't know how much.

Q. Yes, I recall that.

A. There had been a profit in it, and getting down to the little minor points of it, she even got some pigs and raised pigs and got some money.

Q. I appreciate that she had earned some money and that she had this savings account and saved some money.

Defendant's Exhibit No. 16—(Continued)
(Testimony of J. A. Kammerdiner.)

A. That all came into—right into the funds of both of us.

Q. What I would like to get at is this: You started in April, 1923, and what did you acquire; what was it necessary for you to have by way of working capital in order to start this manufacturing of this patented product?

A. Just a few hundred dollars.

Q. What were the expenses that you had to meet in connection with it; that is, how were these few hundred dollars—for what were they expended?

A. From the checking account.

Q. I understand they were taken from the checking account, or you say so now, but what were they necessary for?

A. For making a set of jars, the machine shop.

Q. And those jars you did not yourself manufacture, but you hired them manufactured at some other place?

A. Yes, sir.

Q. What did you have to pay for the manufacture of those jars, just roughly?

A. In the neighborhood of \$500.

Q. For each one?

A. Yes, sir.

Q. How many orders did you have when you started out?

A. One order for one set of jars.

Q. A \$500 order?

A. No, that is all rental. This is rental in the United States. There is none of them sold; there has not been one sold.

Defendant's Exhibit No. 16—(Continued)
(Testimony of J. A. Kammerdiner.)

Q. But it cost you to have them manufactured?

A. Yes, sir.

Q. Now, what did it cost you to manufacture your first set of jars that you started with?

A. About \$500.

Q. \$4500? A. No, \$500.

Q. \$500? A. Yes, sir.

Q. And that money was taken from what source? A. The checking account.

Q. And that checking account was the one which had existed for some time previous, was it?

A. Yes, sir.

Q. Did you have printed or engraved letterheads? A. Yes, sir.

Q. For your business? A. Yes, sir.

Q. What was the caption on the letterheads?

A. J. A. Kammerdiner.

Q. Was your wife's name there at all?

A. No, sir.

Q. Did you ever borrow any money in the course of the business, at banks? A. No, sir.

Q. Is it or is it not a fact that all the contracts entered into in these years, which were contracts you have just spoken of,—were they not in your own name? A. Yes, sir.

Mr. Milliken: We admit that all the contracts of that nature were in the name of James Kammerdiner only.

By Mr. Clark:

Q. What other contracts were there—of what na-

Defendant's Exhibit No. 16—(Continued)

(Testimony of J. A. Kammerdiner.)

ture were they—what kind of contracts were there, if any?

A. There were other agreements or contracts in line with the tool company's, for taking this and putting it out on rental.

Q. And those contracts were signed in your name?

A. Yes; but in the first place——

Q. Well, now, your attorney will take care of your explanation. I just wanted to know whether they were so signed? A. Yes, sir.

Redirect Examination

By Mr. Milliken:

Q. I believe you have testified, Mr. Kammerdiner, that the patent was taken out in the United States Patent Office, or letters patent, whatever they may be called, were they taken out in your name? A. Yes, sir.

By Mr. Milliken:

Q. Why did you operate under the name of J. Kammerdiner; was there any reason for it?

A. Well, I was very well known in this community and I imagine that——

Q. Well, now, leave out what you imagined. You cannot testify as to what you imagine.

A. Well, I was very well known in this country and all of the leading companies, and a good many of the smaller ones, I had been in contact with in one way or the other, and they knew that I had a

Defendant's Exhibit No. 16—(Continued)
(Testimony of J. A. Kammerdiner.)

good bit of experience in drilling oil wells, and I figured that my name would have some prestige in bringing in the business.

Q. Well, did you feel, or did you decide, that there was—it would be more advantageous to you, from a business standpoint, to operate under your name? A. Yes, sir.

Q. Or the name of you and your wife?

A. Under my name.

Q. Was that the reason you operated under your name? A. Yes, sir.

Q. Did you ever pay your wife any salary?

A. No, sir.

Q. During any of the years since 1923?

A. No, sir, I did not.

By Mr. Milliken:

Q. Did or did not your wife, during these years, give orders and enter into agreements with respect to the manufacture of this article, and what they were to cost and who was to be paid?

A. Yes, sir.

Q. Now, you testified that, in April, 1923, you entered into this partnership agreement; did it relate to all the rights which you then had, or all the rights which you might acquire thereafter in the patent, or to the patent, or to the rights which you then had?

The Member: Of course, I am of the impression the witness already testified to the terms of this oral contract a time or two.

Defendant's Exhibit No. 16—(Continued)
(Testimony of J. A. Kammerdiner.)

Mr. Milliken: I will state my purpose after the witness has answered.

The Witness: All the rights.

Mr. Milliken: That is all.

Recross Examination

By Mr. Clark:

Q. Just what was—what were the terms of this agreement, Mr. Kammerdiner? Let me preface that question:

Was there a time when you and Mrs. Kammerdiner sat down together and agreed on the terms of the contract? A. Yes, sir.

Q. Between yourselves? A. Yes, sir.

Q. When was that?

A. That was in April, 1923.

Q. You have spoken, on redirect examination, of the agreement into which Mrs. Kammerdiner entered for materials and supplies for the manufacture of these tools, I am not just sure just what, but you recall that you did answer to that effect?

A. Yes, sir.

Q. Were those written agreements into which Mrs. Kammerdiner entered?

A. Some of them were.

Q. And whose names were signed to the agreements? A. Her name.

Q. Did she sign your name at any time?

A. She signed her name—signed my name with her name or initials after it, each time.

Defendant's Exhibit No. 16—(Continued)

MRS. MYRTLE B. KAMMERDINER

was called as a witness by and on behalf of the petitioner, and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Milliken:

Q. You are the wife of James Kammerdiner?

A. Yes, sir.

Q. Did Mr. Kammerdiner state the correct date of your marriage?

A. Yes, sir.

Q. In what business were you engaged prior to your marriage, if any?

A. I was a stenographer, in general office work.

Q. After you married Mr. Kammerdiner, what were your duties; those of a housewife?

A. Yes, sir.

Q. He has testified that—you heard him testify that, when he went on some of these jobs, you also ran boarding houses and so on, for him, as part of his employment, the duties of his employment?

A. I did.

Q. Did you save any money out of that?

A. I did.

Q. How much was it?

A. Well, I don't know exactly. It was quite a little sum, several thousand dollars.

Q. What did you do with it?

A. I deposited it in the bank.

Q. To your own account?

A. No, it was deposited jointly.

Q. Did you have a savings account out of it?

Defendant's Exhibit No. 16—(Continued)
(Testimony of Mrs. Myrtle B. Kammerdiner.)

A. Yes, sir.

Q. Was that in your name, or his name?

A. It was to start with, and it was later transferred to both of our names.

Q. When did you transfer it over, do you know?

A. No, I don't know exactly. It was transferred over, though, sometime before we went into the business; I know that.

Q. I see.

A. Originally it was just Myrtle B. Kammerdiner.

Q. It was originally in your name, and you transferred it over to the joint account of each?

A. Yes, sir.

Q. Did the funds which you had and the funds which Mr. Kammerdiner had, comprise your joint account in 1923?

A. Yes, sir.

Q. Was it subject to check for any expenses which might have been necessary incident to the rotary jar business?

A. Yes, sir.

Q. In the beginning?

A. Yes, sir.

Q. What part, if any, did you play, in your consultations with Mr. Kammerdiner, with respect to the procuring of the patent, the rotary jar patent?

A. Well, of course, it was his idea, and a question came up about the patent that he was rather slow about applying, and I thought it should be attended to, because I felt it was something that was important, and in that way I got—I consulted some

Defendant's Exhibit No. 16—(Continued)
(Testimony of Mrs. Myrtle B. Kammerdiner.)

attorneys that we were acquainted with, and it was through them that they recommended this patent attorney for him to go to. He was quite reluctant about attending to it, because he was employed there by one of the big companies and he felt that he didn't have the time to attend to it.

Q. Did you and Mr. Kammerdiner enter into any agreement with respect to the manufacture of these patented articles?

A. I don't just get that.

Q. Did you enter into any agreement with respect to what rights, if any, you had, or what rights, if any, he had, or at any time did you discuss the matter of how you would conduct the business?

A. Yes, sir.

Q. When did you do that?

A. Well, that was right—when we started out, it was along in the spring, in April.

Q. What year? A. 1923.

Q. What understanding or agreement did you reach?

A. Well, he said he would conduct the field work, the running of these jars, and I would take care of the collections and receive the telephone orders as they came in, and do the billing, and do the collecting.

Q. And did you do so? A. I did.

Q. What was the agreement, if any, that was reached with respect to the share in the gains or share in the losses?

Defendant's Exhibit No. 16—(Continued)
(Testimony of Mrs. Myrtle B. Kammerdiner.)

A. Well, we were to take a share alike, fifty-fifty the losses or the gains.

Q. And that was the agreement, the one you entered into? A. Yes, sir.

Q. What duties did you perform, if any, in the rotary jar business, during the years 1925, 1926 and 1927?

A. Well, I attended to the billing and the checking of any bills that came in against us, that were to be paid out, made out the checks and signed some of the checks, and some Mr. Kammerdiner signed after I made them out. I O. K.'ed the bills, and then did most of the ordering of the jars, the bills that were made from the shop, and what collecting—I did the collecting.

Q. Did you pass upon the credit of the individual—— A. Yes, sir.

Q. With whom you were going to do business?

A. Yes, sir.

Q. Did you pass upon, or did you not pass upon the fact of whom you were going to get to manufacture these articles?

A. Yes, sir, that was talked over.

Q. And at what price they would be manufactured? A. Yes, sir.

Q. Did you pass upon the disputed items, if there were any? A. Yes, sir.

Q. Were there any?

A. Oh, yes, there were a number of times that they came up—you see, our repair work—we could

Defendant's Exhibit No. 16—(Continued)
(Testimony of Mrs. Myrtle B. Kammerdiner.)
not have a stipulated price—and that was just done,
and if there were any mistakes in those, those bills
were checked——

Q. The moneys that you collected, what did you
do with them?

A. I deposited them in the joint account.

Q. The joint account of whom?

A. Mr. or Mrs. J. Kammerdiner.

Q. Did you have a right in 1925 and 1926 and
1927 to draw on that account into which you de-
posited these moneys?

A. Yes, sir.

Q. Did you do so?

A. Yes, sir.

Q. Did you make investments of your own out
of that account?

A. Yes, sir.

Q. Did Mr. Kammerdiner discuss with you any
important matters with respect to the operation of
the business?

A. Yes, sir, we always went into consultation
on them.

Q. Did he make any changes, or change the
scope of the business in any way, without discussing
it with you, or did he go ahead and do it of his
own volition?

A. No, it was always talked over.

Q. Talked over?

A. Yes, sir.

Q. With you?

A. Yes, sir.

Q. Did you and Mr. Kammerdiner ever discuss
the question of the desirability of operating under
the name of James Kammerdiner?

A. Yes, sir.

Defendant's Exhibit No. 16—(Continued)
(Testimony of Mrs. Myrtle B. Kammerdiner.)

Q. What discussion did each of you have, or did you have, at least?

A. We thought, that inasmuch as he was so well acquainted all through the field, it was the thing to use, just James Kammerdiner?

Q. Did you do any advertising in these years?

A. Yes, sir.

Q. Who prepared the advertising?

A. Well, it was gotten up through—between the magazine representatives and myself.

Q. Who placed the order for the advertising?

A. I did.

Q. Who paid for the advertising?

A. Well, I think I did, personally. I wrote the checks.

Q. Were there books kept of the business during the years 1925, 1926 and 1927?

A. Well, it was just a single entry; we didn't keep a double entry.

Q. Who kept those books? A. I did.

Q. I show you three books that are labeled on the outside "1925," "1926," and "1927"; were those the books that you kept? A. Yes, sir.

Q. Will you please explain—are they all in the handwriting of yourself? A. Yes, sir.

Q. All of the handwriting in the books yours?

A. Yes, sir.

Q. Will you explain to the court the manner in which these books were kept? Are they all kept alike, so that the explanation for one year would

Defendant's Exhibit No. 16—(Continued)
(Testimony of Mrs. Myrtle B. Kammerdiner.)
suffice for all three years? A. Yes.

Q. Did your books, for any of the years, record what might be termed as capital account of either you or Mr. Kammerdiner? Do you understand what I mean by capital account? I mean, setting up an account showing what James Kammerdiner is entitled to, and what you are entitled to.

A. No.

Q. Were there, or were there not, any capital accounts set up on your books for 1925, 1926 and 1927, with respect to James Kammerdiner and for yourself? A. No, sir.

Q. Why were no capital accounts set up?

A. Well, we didn't feel it was necessary. There was nobody involved but just he and I, and we trusted one another enough that we didn't feel it was necessary.

By Mr. Milliken:

Q. Have you any other records, exclusive of those books, which will reflect the earnings of the business? What did you do with the money that you earned from the business?

A. It was all deposited to the joint account.

The Member: Do you want it to stand that way, deposited in the bank, as reflecting the earnings of the business?

By Mr. Milliken:

Q. In other words, the earnings—any collections that you made for the business, what did you do with them? A. Deposited them.

Defendant's Exhibit No. 16—(Continued)
(Testimony of Mrs. Myrtle B. Kammerdiner.)

Q. And any bills that you paid, that were the bills of the business, what did you do with them?

A. Well, we paid them out of it.

Q. Paid them out of what—the account?

A. Yes, sir.

Q. You have testified that these books record the amount of the cash collections in each year; is that true?

A. Yes, sir.

Q. And they record the payments each year?

A. Yes, sir.

Q. Did you receive any salary from the business during any of these years?

A. No, sir.

Q. What were your hours of employment?

A. Well, I don't know; just as soon as I got through.

By The Member:

Q. How many hours a day did you work at this business?

A. I worked at it every day except Sunday.

By Mr. Milliken:

Q. Did you work at night?

A. Well, no.

Q. Did you ever have any business transactions at night?

A. Oh, there have been telephone calls, and of course I would receive them.

Q. Did you devote your entire time and attention to this business during the years 1925, 1926 and 1927?

A. Practically.

Defendant's Exhibit No. 16—(Continued)
(Testimony of Mrs. Myrtle B. Kammerdiner.)

Q. What else did you do, if that wasn't all?

A. Well, that is about all.

Mr. Milliken: That is all, Mr. Clark.

Cross Examination

By Mr. Clark:

Q. The offices in which you conducted this employment were in your home, I believe?

A. Yes, sir.

Q. Did you conduct the home yourself?

A. Well, I had help.

Q. How much domestic help did you employ?

A. I had one servant, and I had extra help that came in.

Q. How much extra help during the years that are involved here?

A. Well, it would be one or two days a week, I had a laundress and had a woman that came in to do the cleaning.

Q. Then you had one servant who was there——

A. All of the time.

Q. During that period? A. Yes, sir.

Q. How much did you pay this domestic help?

A. I paid her \$80 a month, and of course the other work was done by the hour, you know.

Q. When did she come with you first?

A. In January, I think. I don't know now. I know it was along the first of the year, but I don't know what day it was.

Q. The first of the year when?

Defendant's Exhibit No. 16—(Continued)
(Testimony of Mrs. Myrtle B. Kammerdiner.)

A. That is what I don't know, what year it was. It was right after we started, I know, but I don't know just——

Q. Did your household consist entirely of Mr. Kammerdiner and yourself?

A. No, we have two daughters.

Q. How old were they at this time?

A. One is about 18 and one is 15.

Q. Is that their present ages?

A. Yes, sir.

Q. Any other members of your family?

A. No.

Q. Did you give attention to them, and their upbringing, the supervision of their activities and affairs, personally, during these years, or was that looked after by one of the domestic help?

A. Well, yes, of course I gave them advice and all that, but they were looked after by the help.

Q. Did you perform what you would consider the ordinary duties and functions of a mother of two daughters of the ages that they were, during these years in question?

A. Yes, naturally, I looked after them.

Q. You stated that you signed checks; did you sign your own name or did you sign Mr. Kammerdiner's name?

A. I signed my own name, Mrs. J. Kammerdiner.

Q. That was on this account, on which you both had the right to draw? A. Yes.

Defendant's Exhibit No. 16—(Continued)
(Testimony of Mrs. Myrtle B. Kammerdiner.)

Mr. Clark: That is all.

Mr. Milliken: That is all.

The Member: That is all, Mrs. Kammerdiner.

Mr. Milliken: I want to ask you another question, Mrs. Kammerdiner.

Redirect Examination

By Mr. Milliken:

Q. Mrs. Kammerdiner, was this contract or agreement that you and Mr. Kammerdiner entered into in April, 1923—was it reduced to writing?

A. Yes, sir.

Q. When was it reduced to writing?

A. In 1928.

Q. Was the contract which was reduced to writing in 1928—did it set forth any new understanding or agreement reached between you?

A. No, it was merely to verify our—to verify our verbal——

Q. It was merely to reduce to writing what had theretofore been agreed upon?

A. Yes, sir.

Q. And observed during these years, was it?

A. Yes, sir.

Mr. Milliken: That is all.

Mr. Clark: That is all.

(Witness excused.)

[Endorsed]: Filed Dec. 29, 1941.

Mr. Mitchell: The defendants rest.

The Court: Any rebuttal?

Mr. Smith: The plaintiffs rest .[156]

Mr. Mitchell: Excuse me, your Honor. I think it was the intention of all the parties, as well as the judge, that Defendant 13, a list of patents prepared by Mr. Mann, would go out and be stricken.

Mr. Smith: Yes.

The Court: We will mark it withdrawn then because errors were discovered in it.

[Endorsed]: Filed Jan. 8, 1942. [157]

[Endorsed]: No. 10351. United States Circuit Court of Appeals for the Ninth Circuit. Nat Rogan, Collector of Internal Revenue for the Sixth District of California, Appellant, vs. James A. Kammerdiner, individually and as Surviving Joint Tenant of Myrtle B. Kammerdiner, deceased, Appellee. Transcript of Record upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed: January 18, 1943.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10351

NAT ROGAN, Collector of Internal Revenue,
Appellant

vs.

JAMES A. KAMMERDINER, individually and as
surviving joint tenant of Myrtle B. Kammer-
diner, Deceased,

Appellee

STATEMENT OF POINTS ON WHICH
APPELLANT INTENDS TO RELY

The issues involved in this case are:

(1st) Whether more than one-half of the 1935 assets of the joint tenancy Rotary Jar business of Mr. and Mrs. Kammerdiner “originally belonged” to the surviving husband, within the meaning of Section 302(e) of the Revenue Act of 1926, as amended; and

(2d) If so, whether Mrs. Kammerdiner, the decedent, paid for her joint tenancy one-half interest any “adequate or full consideration in money or money’s worth”, within the meaning of the same section of the state tax statute and of Articles 22, 23 and 23(b) of Regulations 80 (1934 ed)?

Appellant’s Contentions.

Appellant contends, alternatively, (1st) that the decedent’s half never originally belonged to

her husband, but (2d) that, if it did, she acquired it from her husband for a valuable consideration in money or money's worth.

Points Relied Upon by Appellant.

In support of above contentions, appellant will here urge the following points, to wit:

I.

The trial court erred in concluding that plaintiff-appellee sustained his burden of establishing that none of the decedent's half of the assets and income of the joint tenancy Rotary Jar business originally belonged to her.

II.

The trial court erred in concluding that plaintiff sustained his burden of establishing that decedent did not acquire her half of the assets and income of such joint tenancy business for an adequate or full consideration in money or money's worth.

III.

There is no substantial or other evidence to support the trial court's finding that all or any of the decedent's half of the assets and income of the joint tenancy business originally belonged to her surviving husband.

IV.

There is no evidence, substantial or otherwise, to support the trial court's finding that no part of decedent's half of the assets and income of the joint tenancy business was acquired by her for an ade-

quate or full consideration in money or money's worth.

V.

There is no evidence, substantial or otherwise, to support the trial court's findings and conclusions (a) to the effect that decedent and her husband never entered into a co-ownership agreement in respect of the assets and income of said Rotary Jar business prior to their written joint tenancy agreement of 1928; or (b) to the effect that decedent and her husband never entered into either a co-partnership or a joint adventure agreement in respect of said enterprise prior to their written joint tenancy agreement of 1928.

VI.

The trial court erred in deciding and concluding that the plaintiff, by clear and convincing evidence, traced 100% of each 1935 asset of said joint tenancy business back to California community property of the type acquired before July 29, 1927.

VII.

The trial court erred in deciding and concluding that, by clear and convincing evidence, the plaintiff established that he made a gift to decedent of her half of the assets and income of the joint tenancy business.

VIII.

The trial court erred in deciding and concluding that, by clear and convincing evidence, the plaintiff

established that decedent never invested any funds of her own in the promotion or conduct of such Rotary Jar enterprise, and never, pursuant to an agreement or understanding, contributed any extra-marital personal services in the initial promotion thereof; and there is no substantial or other evidence to support the trial court's implied finding to that effect.

IX.

The trial court erred in deciding and concluding that, by clear and convincing evidence, the plaintiff established that decedent never agreed to contribute her extra-marital personal services to the conduct of said Rotary Jar enterprise in consideration of plaintiff's promise that she should own an undivided one-half of the property and income of such business; and there is no substantial or other evidence to support the court's finding to that effect.

X.

The trial court erred in deciding and concluding that, by clear and convincing evidence, the plaintiff established that the decedent did not contribute twelve years of her extra-marital personal services, or any services, to the conduct of such business pursuant to and in reliance upon plaintiff's said promise; and there is no evidence, substantial or otherwise, to support the court's implied finding to that effect.

XI.

The trial court erred in deciding and impliedly

concluding that, by clear and convincing evidence, the plaintiff established that the twelve years of extra-marital personal services contributed by decedent to said business were gratuitous, and that the value thereof constituted a gift by her to plaintiff or to the marital community; and the court's implied finding and conclusion to that effect is not supported by the evidence.

XII.

The trial court erred in deciding and impliedly concluding that, by clear and convincing evidence, the plaintiff established that the decedent's contribution of twelve years of personal services to said enterprise was valueless; and the court's implied finding to that effect is not supported by the evidence.

XIII.

The trial court erred in deciding and impliedly concluding that, by clear and convincing evidence, the plaintiff established that the decedent's joint tenancy half interest in the assets and income of said enterprise was not acquired by her as the compensation of an employee for personal services rendered by her; and the court's implied finding to that effect is not supported by the evidence.

XIV.

The trial court erred in deciding and impliedly concluding that, by clear and convincing evidence, the plaintiff established that no part of the value

of the 1935 assets of the Rotary Jar business was attributable to the personal services of the spouses exerted after July 29, 1927; and the court's implied finding to that effect is not supported by the evidence.

XV.

The trial court erred in deciding and impliedly concluding that, by clear and convincing evidence, the plaintiff established that no part of the 1935 value of the assets of said enterprise was attributable to the protective patents purchased with co-owned funds of the spouses; and the court's implied finding to that effect is not supported by the evidence.

XVI.

There is no evidence to support the trial court's finding that all rights under the original patent were not owned by the Rotary Jar enterprise, or to support the finding that such rights were never assets of such enterprise.

XVII.

The trial court erred in denying the defendant's Motion for New Trial and to Amend and Add Findings and Conclusions.

XVIII.

The plaintiff-appellee is barred in this action from proving or attempting to prove the falsity of the facts decided and adjudicated in his favor by the Board of Tax Appeals in the cases of *J. Kammerdiner v. Comm'r.*, 25 B.T.A. 495 (1932), *Acq.*

XI-2 C. B. 5; and the trial court erred in denying appellant's plea of res adjudicata.

Dated: January 16, 1943.

LEO V. SILVERSTEIN,
United States Attorney.

E. H. MITCHELL,
Assistant United States At-
torney.

By E. H. MITCHELL,
Attorneys for Appellant.

[Endorsed]: Filed Jan. 18, 1943. Paul P.
O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF PARTS OF RECORD
DEEMED NECESSARY FOR CONSIDER-
ATION ON APPEAL

Pursuant to Rule 19-6 of this Court, appellant designates the parts of the Record which he thinks necessary for the consideration of the points listed in his Statement of Points on which he intends to rely, filed concurrently herewith, and the parts which he desires to have printed, to wit:

Documents

	Pages of Certified Record
1. Names and addresses of attorneys	1
2. Complaint, including exhibits attached . . .	2

3. Answer	42
4. Minute Order of February 28, 1942	48
5. Findings and Conclusions, dated July 15, 1942	50
6. Judgment, dated July 15, 1942	61
7. Defendant's Motion for New Trial and to Amend and Add Findings and Conclu- sions, dated and filed July 22, 1942.....	63
8. Notice of hearing said Motion (No. 7, above), dated and filed July 22, 1942 ...	74
9. Minute Order, dated and entered August 5, 1942, denying said Motion (No. 7, above)	76
10. Defendant's Notice of Appeal, dated and filed October 20, 1942	77
11. Order extending time to docket cause on appeal, dated and filed November 25, 1942	78
12. Order extending time to January 18, 1943, to docket cause on appeal, dated and filed January 12, 1943	79
13. Defendant's Designation of Contents of Record on Appeal, dated and filed Jan- uary 12, 1943	82
14. Stipulation and Order Re Record on Ap- peal, dated and filed January 13, 1943 ..	80
Note: Omit from the foregoing items, 1 through 14, all titles of court and cause, all signatures and verifications, and all endorse- ments, but print all order dates, all service	

and mailing dates, and all filing and entry dates.

15. The following portions of the Reporter's Transcript of Proceedings of December 29, 1941, to wit:

Title of court and cause and date of proceedings

Page 7, line 2 to p. 10, line 9, inclusive

Page 10, line 22 to p. 11, line 9, inclusive

Page 12, lines 12 to 19, inclusive

Page 13, line 6 to p. 15, line 4, inclusive

Page 15, lines 12 to 18, inclusive

Page 16, lines 8 and 9

Page 16, line 15, to p. 30, line 16, inclusive

Page 31, line 7 to p. 34, line 24, inclusive

Page 36, line 17, to p. 42, line 17, inclusive

Page 42, line 25 to p. 47-48, line 8, inclusive

Page 49, lines 2 to 5, inclusive

Page 49, line 21 to p. 58, line 2, inclusive

Page 58, line 19 to p. 59, line 19, inclusive

Page 60, lines 8 to 15, inclusive

Page 60, line 20 to p. 62, line 20, inclusive

Page 63, line 10 to p. 65, line 13, inclusive

Page 66, lines 1 and 2

Page 67, line 12 to p. 75, line 14, inclusive

Page 77, line 24 to p. 79, line 21, inclusive

Page 82, line 20 to p. 83, line 11, inclusive

Page 83, line 19 to p. 87, line 15, inclusive

Page 87, line 24 to p. 89, line 25, inclusive

Page 93, line 10 to p. 97, line 26, inclusive

Page 98, line 11 to p. 100, line 13, inclusive

Page 100, line 23 to p. 101, line 4, inclusive
Page 104, line 18 to p. 105, line 7, inclusive
Page 106, line 15 to p. 108, line 21, inclusive
Page 109, line 8 to p. 110, line 14, inclusive
Page 111, line 4 to p. 113, line 25, inclusive
Page 115, line 25 to p. 16, line 6, inclusive
Page 118, line 1
Page 118, line 13 to p. 119, line 18, inclusive
Page 119, line 25 to p. 20, line 11, inclusive
Page 120, line 7 to p. 122, line 3, inclusive
Page 122, lines 13 to 18, inclusive
Page 122, lines 23 to 27, inclusive
Page 123, lines 2 to 21, inclusive
Page 124, lines 1 to 20, inclusive
Page 125, lines 2 to 6, inclusive
Page 125, lines 14 to 22, inclusive
Page 126, line 10 to p. 131, line 8, inclusive
Page 133, line 16 to p. 143, line 26, inclusive
Page 144, line 7 to p. 146, line 9, inclusive
Page 146, line 19 to p. 147, line 1, inclusive
Page 147, line 16 to p. 148, line 22, inclusive
Page 148, line 26 to p. 149, line 5, inclusive
Page 149, lines 14 to 24, inclusive
Page 150, lines 9 to 11, inclusive
Page 150, line 24 to p. 151, line 2, inclusive
Page 154, line 8 to p. 155, line 22, inclusive
Page 156, lines 14 to 16, inclusive
Page 157, lines 11-17, inclusive

Defendant's Exhibits

16. Defendant's Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10
and 11 (all bank books).

Note. Print or photostat only the pages of these bank books upon which appear the account numbers, depositors' names, the dates and amounts of deposits and withdrawals and the exhibit numbers.

17. Defendant's Exhibit 12, Estate Tax Return.

Note. Print or photostat the following pages, only, to wit:

Page A-3;

Pages A-8 to A-20, inclusive, containing Schedule "D-1";

Page A-21, containing Schedule "D-2";

Page A-27, containing Schedule "H";

Page A-31, containing Schedules "L" and "M";

Page A-32, containing Schedules "N" and "O"—if printed, print only Schedule "N";

Page A-34, containing "Computation of Tax"—if printed, print only the computation; and

Page A-35—if printed, print only the "Jurat for Beneficiaries, Cutodians, and Trustees", through the signature of the notary.

18. Defendant's Exhibit marked 14-a but introduced as "14", a certificate of "Partnership Name".

Note. Omit affidavit of publication—but indicate it—and omit County Clerk's certificate attached.

19. Defendant's Exhibit marked 14-b but erroneously introduced as "14", an authenticated

copy of Petition to Board of Tax Appeals with Exhibits attached and answer thereto.

Note. Omit the 2 certificates of the Board's Clerk and the certificate of the Board Chairman.

20. Defendant's Exhibit 15, another authenticated copy of petition to Board of Tax Appeals with Exhibits attached, and answer thereto.

Note. Omit the 2 certificates of Board Clerk and the certificate of the Board Chairman.

21. Defendant's Exhibit 16, an authenticated copy of Official Report of Proceedings before the Board of Tax Appeals in Los Angeles on June 10, 1931.

Note. Print or photostat the following portions, only, to wit:

All of pages E-1, E-5 and E-6

The first 4 and the last 5 lines of page E-7

The first 7 lines of page E-8

The last 18 lines of page E-10

The first 8 lines of page E-11

The last 12 lines of page E-13

All of pages E-14 and E-15

The last 13 lines of page E-17

The first 6 and the last 6 lines of page E-18

All of pages E-19 through E-23

The first 14 and the last 4 lines of page E-24

All of page E-25

The first 7 lines of page E-26

The last 2 lines of page E-27

The first 8 lines of page E-28

The last 8 lines of page E-29

The last 17 lines of page E-30

The first 17 lines of page E-31

Cross-Examination

The 3d and 4th lines of page E-32

Lines 19, 20, 21, 24 and 25 of page E-33

The first 7 lines of page E-34

The last 6 lines of page E-36

The last 7 lines of page E-38

All of page E-39

The first 3 lines and lines 20, 21, 22, 23 and
24 of page E-40

Lines 7, 8 and 9 of page E-41

Redirect Examination

Last 7 lines of page E-44

The first 18 lines of page E-45

The first 10 lines of page E-46

All but the first line of page E-47

The first 9 lines of page E-48

Lines 16 to 22, inclusive, of page E-51

Last 11 lines of page E-53

All of pages E-54, E-55, E-56, E-57, E-58
and E-59

All but the last 5 lines of page E-60

Lines 3 to 10, inclusive, of page E-64

All of pages E-66, E-67, E-68 and E-69

22. Defendant's Exhibit 17

Note. Omit sealed certificate of Chief Clerk,
Treasury Department.

23. Defendant's Exhibit 18
24. Defendant's Exhibits 19 to 36, inclusive, together with attached computations
Note. Omit all sealed certificates of the Chief Clerk, Treasury Department
Omit printed pages 2 of Defendant's Exhibits 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36

Plaintiff's Exhibits

25. Plaintiff's Exhibit 9
26. Plaintiff's Exhibit 11
Note. Print or photostat typed pages 1 and 2 only
27. Plaintiff's Exhibit 12
Note. Print or photostat typed page 1, only
28. All of Plaintiff's Exhibit 13
29. Plaintiff's Exhibit 14
Note. Print or photostat typed pages 1 and 2, only
30. Plaintiff's Exhibit 15
Note. Print or photostat typed page 1, only
31. Statement of Points on which appellant intends to rely, captioned the Circuit Court of Appeals and filed concurrently with this Designation
Note. Omit Title of court, cause and signatures.
32. This Designation
Note. Omit title of court, cause and signatures.

Dated: January 16, 1943.

LEO V. SILVERSTEIN,
United States Attorney.

E. H. MITCHELL,
Assistant United States At-
torney.

By E. H. MITCHELL,
Attorneys for Appellant.

[Title of Circuit Court of Appeals and Cause.]

APPELLEE'S DESIGNATION OF ADDI-
TIONAL PARTS OF RECORD MATERIAL
FOR CONSIDERATION ON APPEAL.

Pursuant to Rule 19-6 of this Court, appellee designates the parts of the record which he thinks material for the consideration of the points listed by the appellant herein in his statement of points, and the parts which he desires to have printed, to wit:

1. The following portions of the Reporter's Transcript of Proceedings of December 29, 1941, to wit:

Page 30, line 17, to page 31, line 6, both inclusive;

Page 34, line 25, to page 36, line 13, both inclusive;

Page 48, line 9, to page 49, line 1, both inclusive;

Page 49, lines 6 to 20, both inclusive;

Page 75, lines 15 to 20, both inclusive;

Page 75, lines 25 and 26;

Page 76, lines 13 to 26, both inclusive;

Page 77, lines 9 to 23, both inclusive;

Page 79, line 22, to page 80, line 23, both inclusive;

Page 81, line 8 to page 82, line 16, both inclusive;

Page 90, lines 3 to 6, both inclusive;

Page 90, lines 12 to 15, both inclusive;

Page 91, line 16, to page 92, line 17, both inclusive;

Page 100, lines 14 to 22, both inclusive;

Page 101, line 5, to page 102, line 13, both inclusive;

Page 103, lines 5 to 9, both inclusive;

Page 105, line 8, to page 106, line 14, both inclusive;

Page 113, line 26, to page 115, line 21, both inclusive;

Page 116, line 7, to page 117, line 4, both inclusive;

Page 119, line 19, to line 24, both inclusive;

Page 120, lines 12 to 16, both inclusive;

Page 122, line 4;

Page 122, lines 11 and 12;

Page 122, lines 19 to 22, both inclusive;

Page 123, lines 22, 23, and 26;

Page 133, lines 11 to 15, both inclusive;

Page 144, line 1;

Page 147, lines 8 to 15, both inclusive;

Page 148, lines 23 to 25, both inclusive;

Page 149, lines 6 to 12, both inclusive;

Page 149, line 25, to page 150, line 2, both inclusive;

Page 151, lines 3 to 13, both inclusive;

Page 152, lines 9 to 14, both inclusive;

2. Defendant's Exhibit 16, an authenticated copy of official report of proceedings before the Board of Tax Appeals in Los Angeles California, on June 10, 1931.

(Note: Print or photostat the following portions only, to wit):

Lines 15 to 24, both inclusive, of page E-8;

Lines 2 to 10, both inclusive, of page E-9;

Lines 22 and 23, of page E-9;

Lines 3 to 7, both inclusive, of page E-10;

Lines 9 to 21, both inclusive, of page E-11;

Lines 5 to 15, both inclusive, of page E-12;

Lines 11 to 13, both inclusive, of page E-13;

Lines 1 to 5, both inclusive, of page E-16;

Lines 15 to 21, both inclusive, of page E-24;

Lines 8 to 21, both inclusive of page E-26;

Lines 6 to 11, both inclusive, of page E-27;

Lines 1 to 5, both inclusive, of page E-30;

Lines 5 to 12, both inclusive, of page E-32;

Lines 15 to 17, both inclusive, of page E-32;

Line 21 of page E-32, to line 18 of page E-33;

Lines 22 and 23 of page E-33;

Lines 16 to 22, both inclusive, page E-34;

Line 25 of page E-34 to line 9 of page E-35, both inclusive;

Lines 18 to 24, both inclusive, of page E-35;

Line 6 of page E-37 to line 18 of page E-38;

Line 4 to line 19, both inclusive, of page E-40;

Line 25 of page E-40, to line 6 of page E-41, both inclusive;

Lines 9 to 12, both inclusive, of page E-42;

Line 22 of page E-42, to line 10 of page E-43;

Line 17 to line 23, both inclusive, of page E-43;

Lines 5 to 10, both inclusive, of page E-61;

All of page E-65;

3. Plaintiff's Exhibit 1.

4. Plaintiff's Exhibit 2.

5. Plaintiff's Exhibit 3.

6. Plaintiff's Exhibit 4.

7. Plaintiff's Exhibit 5.

8. Plaintiff's Exhibit 6.

9. Plaintiff's Exhibit 7.

10. Plaintiff's Exhibit 8.

11. Plaintiff's Exhibit 10.

12. All of plaintiff's Exhibit 11, except such part designated as part of record by appellant.

13. All of plaintiff's Exhibit 12, except such part designated as part of record by appellant.

14. All of plaintiff's Exhibit 14, except such part designated as part of record by appellant.

15. All of plaintiff's Exhibit 15, except such part designated as part of record by appellant.

16. All of plaintiff's Exhibit 16.

17. All of plaintiff's Exhibit 17.

18. All of plaintiff's Exhibit 18.

19. This designation.

(Note: Omit title of Court, cause, and signatures.)

Dated January 25, 1943.

CLAUDE I. PARKER,
RALPH W. SMITH, and
JOHN MOORE ROBINSON,
By JOHN MOORE ROBINSON,
Attorneys for Appellee.

[Endorsed]: Filed Jan. 27, 1943. Paul P. O'Brien,
Clerk.